

(25,150)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1915.

No. 867.

SUPREME LODGE KNIGHTS OF PYTHIAS, APPELLANT,

vs.

ARTHUR V. H. SMYTH.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE SECOND CIRCUIT.

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The District Court of United States, ¹

NORTHERN DISTRICT OF NEW YORK.

ARTHUR V. H. SMYTH,
Complainant-Appellee,

against

SUPREME LODGE KNIGHTS OF
PYTHIAS,
Defendant-Appellant.

No. 3646.

In Equity,

2

To the Clerk:

You are requested to take a transcript of record to be filed in the United States Circuit Court of Appeals for the Second Circuit pursuant to an appeal allowed in the above-entitled cause and to include in such 3 transcript of record the following and no other papers or exhibits, to wit: Summons and complaint, notice of retainer, affidavit and order extending time to answer, answer, petition for removal of cause, order of removal of cause, certificate of Montgomery County Clerk transmitting record upon order of removal of cause, appearance of defendant in United States District Court, plaintiff's evidence as indicated in statement lodged in office of the Clerk of the District Court 4 of the United States for the Northern District of New York the 13th day of September, 1913, pursuant to Equity Rule LXXV, defendant's evidence as indicated in statement lodged in the office of the Clerk of the District Court of the United States for the Northern District of New York pursuant to Equity Rule LXXV, approval of court as to statement of evidence, findings of court, decree, opinion of court, assignment of

- 5 errors, petition for allowance of appeal and the allowance of appeal, citation on appeal and admission of service, copy of this praecipe with admission of service thereof and approval of court and directions of court if any as to matters constituting record on appeal, clerk's certificate.

Dated, Albany, N. Y., September 13th, 1913.

JOHN J. McCALL,

Solicitor for Appellant.

82 State Street, Albany, N. Y.

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Service of a copy of the foregoing praecipe is admitted this 13th day of September, 1913.

ROBERT J. SANSON,

Solicitor for Complainant.

Endorsed: Praecipe filed September 15, 1913.

W. S. DOOLITTLE,

7

Clerk.

STATE OF NEW YORK.

SUPREME COURT — COUNTY OF MONTGOMERY.

8

ARTHUR V. H. SMYTH,	}
Plaintiff,	
<i>against</i>	
SUPREME LODGE, KNIGHTS OF	}
PYTHIAS OF THE WORLD,	
Defendant.	

To the above named Defendant:

YOU ARE HEREBY SUMMONED to answer the complaint in this action, and to serve a copy of your

answer on the plaintiff's attorney within twenty days after the service of this summons, exclusive of the day of service; and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint. 9

Trial to be held in the county of Montgomery.

Dated, December 31st, 1910.

ROBERT J. SANSON,

Plaintiff's Attorney.

Office Address and Post Office Address, No. 67
East Main Street, Amsterdam, New York. 10

SUPREME COURT — MONTGOMERY COUNTY.

ARTHUR V. H. SMYTH,	}
Plaintiff,	
<i>against</i>	
SUPREME LODGE KNIGHTS OF	
PYTHIAS OF THE WORLD,	
Defendant.	

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Plaintiff complains of the defendant and alleges:

That the defendant was at all the times hereinafter mentioned, and now is, a foreign corporation, duly organized and created under the laws of the State of Indiana, and duly authorized and engaged in the business of insurance of members of the Knights of Pythias through the Endowment Rank of said corporation. 12

That the plaintiff at the time the policy hereinafter referred to was issued to him was, and now is, a resident of the county of Montgomery, in the State of New York, and was at all of said times a member in good standing of the order of Knights of Pythias of the World.

- That on or about the 7th day of November, 1889, the defendant in consideration of the payment to it by
- 13 Arthur V. H. Smyth of the sum of \$1.00 admission fee and in consideration of the payment thereafter to be made to it of all assessments required to be made by the defendant as such assessments were then fixed and determined by the defendant, and which were then fixed and agreed upon between the plaintiff and the defendant at \$3.00 per month, the defendant duly issued its policy of insurance to the plaintiff, wherein and whereby it provided that there would be paid by
- 14 the defendant, the Supreme Lodge Knights of Pythias of the World, to his, plaintiff's children, as directed by the plaintiff in his application for such insurance, on the death of the plaintiff, the sum of \$3,000.

That he received the said policy and thereafter complied with all the terms and conditions therein contained, and paid the moneys that he was therein and thereby required to pay as they became due.

- 15 That shortly prior to the commencement of this action, the defendant notified the plaintiff in writing that unless he surrendered his said policy to the defendant and accepted another policy in lieu thereof containing different terms and conditions and thereafter increased his payments of \$3.00 per month to \$14.70 per month, it would cancel and discharge his said policy and the same would thereupon be and become null and void.
- 16 Plaintiff further alleges, on his information and belief, that the defendant intends to cancel said policy and to nullify and destroy the same unless this plaintiff shall surrender his said policy and pay to the defendant, its officers and agents, the increased sum of \$14.70 per month, and that the defendant will thereby, in and by the cancellation of said policy, destroy the right and claim of the plaintiff and said beneficiaries named in said policy to claim or receive the said sum of \$3,000

or any other sum from the said Supreme Lodge Knights of Pythias of the World on the death of this plaintiff.

That this plaintiff has no adequate remedy at law 17
and cannot by an action at law enforce his rights under the said policy nor prevent the cancellation of the same nor recover his damages therein.

WHEREFORE, plaintiff demands the judgment of the Court:

That the defendant be restrained by the judgment of the Court from cancelling or attempting to cancel the said policy issued to this plaintiff. 18

That the defendant be restrained by the judgment of this court from demanding from the plaintiff said increased payment over and above the amount that he agreed to pay at the time the said policy was issued to him.

That the defendant be restrained from cancelling the said policy of this plaintiff and from demanding that the plaintiff be required to surrender the same.

That in case the defendant shall attempt to cancel 19
the said policy or shall cancel the same upon its books before the judgment of this court can be obtained in this action staying the defendant from cancelling the same, that then the defendant be required to restore the said policy and to continue the same as in and by its provisions required and at the rates fixed and agreed upon between plaintiff and defendant at the issuance of said policy and as provided in and by its terms. 20

That the plaintiff have such other and further relief as may be just and equitable, together with the costs of this action.

ROBERT J. SANSON,

Plaintiff's Attorney.

Office and P. O. Address, 67 East Main Street,
Amsterdam, N. Y.

MONTGOMERY COUNTY, ss.:

- 21 Arthur V. H. Smyth, being duly sworn, deposes and says that he is the plaintiff in this action; that he has read the foregoing complaint and knows the contents thereof; that the same is true to the knowledge of deponent, except as to the matters therein stated to be alleged on information and belief, and as to those matters he believes it to be true.

ARTHUR V. H. SMYTH.

- 22 Subscribed and sworn to before me this
31st day of December, 1910.

F. S. VANDER VEER,
Notary Public.

(Notary Seal.)

STATE OF NEW YORK, MONTGOMERY COUNTY CLERK'S
OFFICE, ss.:

- 23 I, Henry Wagner, Jr., Clerk of said county, and ex officio clerk of the Supreme Court in and for said county, do hereby certify that I have compared the foregoing copy of a summons and complaint with the copy summons and complaint filed in this office February 6th, 1911, and that the same is a correct transcript therefrom and of the whole of such original.

- 24 IN WITNESS WHEREOF I have hereunto set my hand and affixed my official seal, at Fonda, this 7th day of February, 1911.

HENRY WAGNER, JR.,
Clerk.

(L. S.)

By JNO. F. COLLINS,
Deputy Clerk.

Endorsed: Summons and Complaint.

SUPREME COURT — COUNTY OF MONTGOMERY.

ARTHUR V. H. SMYTH,
Plaintiff,

vs.

SUPREME LODGE KNIGHTS OF
PYTHIAS OF THE WORLD,
Defendant.

25

SIR:

You will please take notice that I have been retained 26
by and appear for the defendant in the above-entitled
action. All papers therein may be served upon me at
my office and post office address, No. 25 North Pearl
Street, Albany, N. Y.

Dated, Albany, N. Y., January 19, 1911.

Yours, etc.,

JOHN J. MCCALL,

Attorney for Defendant.

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Office and Post Office Address, No. 25 North
Pearl St., Albany, N. Y.

To ROBERT J. SANSON, Esq., Attorney for Plaintiff.

STATE OF NEW YORK, MONTGOMERY COUNTY CLERK'S
OFFICE, ss.:

I, Henry Wagner, Jr., Clerk of said county, and 28
ex officio Clerk of the Supreme Court in and for said
county, do hereby certify that I have compared the
foregoing copy of notice of retainer with the original
thereof filed in this office February 7th, 1911, and that
the same is a correct transcript therefrom and of the
whole of such original.

IN WITNESS WHEREOF, I have hereunto set my hand
and affixed my official seal, at Fonda, this 7th day of
29 February, 1911.

HENRY WAGNER, JR.,
Clerk.

(L. S.)

By JNO. F. COLLINS,
Deputy Clerk.

Endorsed: Notice of Retainer.

30 SUPREME COURT.

<p>ARTHUR V. H. SMYTH, Plaintiff, vs. SUPREME LODGE KNIGHTS OF PYTHIAS OF THE WORLD, Defendant.</p>	}	<p>Affidavit and Order Extending Time to Answer.</p>
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31

STATE OF NEW YORK, CITY AND COUNTY OF ALBANY,
ss.:

John J. McCall, being duly sworn, says he is the
attorney for the defendant herein.

That said defendant's attorney resides at the city of
Albany, N. Y.

32 That the complaint herein was served on or about
the 31st day of December, 1910.

That the cause of action alleged in said complaint is
one brought to restrain defendant from cancelling a
certificate or policy issued by defendant to plaintiff by
reason of failure of plaintiff to pay increased dues
thereon and for a judgment restraining defendant from
collecting or assessing increased dues on said certificate
and the relief demanded therein is for a permanent in-
junction for the relief as stated above.

That no other extension of time to answer or demur has been granted by stipulation or order.

That the place of trial designated in the complaint is the county of Montgomery in which the next term of the Supreme Court is appointed to be held, on the 13th day of February, 1911. 33

That no previous application for an order extending the time to answer herein from the time when it will now expire has been made.

That owing to fact that papers were served first on Insurance Department of State of New York and by them sent to Indianapolis, Ind., the home office of defendant above named, and by them sent on to New York State, deponent was not retained until January 11, 1911. That the preparation of answer in said action will necessitate the inspection of documents in possession of defendant, some of which are at home office in Indianapolis, Ind., and some in New York City, and also will necessitate correspondence and personal interviews with defendant's officers, some of whom are in New York and some in Indianapolis. That your deponent will not have time to secure such inspection of documents or correspondence with and interview the agents of said defendant within the time to answer and for those reasons the defendant's attorney has been unable to prepare and serve an answer herein and desires an order extending the time so to do twenty days. 34 35

That from the statement of the case in the action made to deponent by the defendant's agents, deponent verily believes that the defendant has a good and substantial defense, upon the merits, to the cause of action set forth in the complaint or to some part thereof. 36

JOHN J. McCALL.

Sworn and subscribed before me, this
 37 19th day of January, 1911.

ALDEN CHESTER,
 Justice of Supreme Court.

UPON THE FOREGOING AFFIDAVIT, ORDERED, That
 the time to plead or otherwise move herein be extended
 twenty days.

Issue of date when answer is due.

38 Dated, the 19th day of January, 1911.

ALDEN CHESTER,
 Justice Supreme Court.

Endorsed: To ROBERT J. SANSON, Plaintiff's
 Attorney.

Take notice of an order duly made herein founded
 upon an affidavit with a copy whereof you are here-
 with served.

39 Yours, etc.,

JOHN. J. MCCALL,
 Attorney for Defendant.

Office and Post Office Address, 25 North Pearl
 Street, Albany, N. Y.

STATE OF NEW YORK, MONTGOMERY COUNTY CLERK'S
 40 OFFICE, ss.:

I, Henry Wagner, Jr., Clerk of said county, and
 ex officio Clerk of the Supreme Court in and for said
 county, do hereby certify that I have compared the
 foregoing copy of an affidavit and order extending time
 to answer with the originals thereof filed in this office
 February 7th, 1911, and that the same is a correct
 transcript therefrom and of the whole of such original.

IN WITNESS WHEREOF, I have hercunto set my hand
and affixed my official seal, at Fonda, this 7th day of
February, 1911.

41

HENRY WAGNER, JR.,

Clerk.

(L. S.)

By JNO. F. COLLINS,

Deputy Clerk.

Endorsed: Affidavit and Order Extending Time to
Answer.

SUPREME COURT — COUNTY OF MONTGOMERY.

42

ARTHUR V. H. SMYTH,
Plaintiff,

vs.

SUPREME LODGE KNIGHTS OF
PYTHIAS OF THE WORLD,
Defendant.

43

The defendant in the above-entitled action for an
answer to the complaint of above-named plaintiff
therein:

First. Admits that defendant is a foreign corpora-
tion duly authorized and engaged in the business of
insurance of members of the Knights of Pythias
through the Endowment Rank of said corporation.

Second. Denies that said corporation, defendant,
was organized and created under the laws of the State
of Indiana.

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Third. Admits that plaintiff in the above-entitled
action was at the time of the issuing to him of the cer-
tificate mentioned in said complaint and ever since has
been a resident of the county of Montgomery and State
of New York.

Fourth. Denies that plaintiff now is a member in
45 good standing of the order of Knights of Pythias of
the World.

Fifth. Admits that on the 7th day of November,
1889, the defendant issued to plaintiff its policy of in-
surance, wherein the children of plaintiff were nom-
inated as beneficiaries thereunder and that said policy
was in the amount of three thousand dollars and that
whatever moneys were payable under said certificate or
46 policy of insurance were to be payable at the death of
plaintiff.

Sixth. Denies that the consideration for said cer-
tificate or policy of insurance issued by defendant to
plaintiff as aforesaid was the payment by plaintiff to
defendant of the assessments at that time fixed and
determined.

Seventh. Denies that plaintiff has complied with
all the terms and conditions contained in said policy or
47 certificate and denies that plaintiff has paid all the
moneys to defendant he was by said certificate or policy
of insurance required to pay.

Eighth. Admits that prior to commencement of
above-entitled action defendant duly notified plaintiff
in writing of a change in the rates of assessment which
he would be required to pay under said certificate or
policy of insurance, and that such change was made in
pursuance of and under the rules and by-laws of de-
48 fendant lawfully made and adopted and the payment
of which plaintiff in his contract and certificate of in-
surance agreed to pay and also notified plaintiff that a
failure upon part of plaintiff to make such payments as
required would nullify the certificate or policy of in-
surance theretofore issued by defendant to plaintiff.

Ninth. Denies each and every other allegation in
said complaint contained not hereinbefore specifically
admitted or controverted.

For a second and further answer and defense to the complaint of plaintiff in above-entitled action defendant alleges: 49

First. That the complaint of plaintiff in the above-entitled action does not state facts sufficient to constitute a cause of action against above-named defendant in above-entitled action.

For a third and further answer and defense to the complaint of plaintiff in above-entitled action defendant alleges: 50

First. That the defendant above named is a foreign corporation duly organized and existing under and by virtue of and in pursuance of an Act of Congress of the United States approved by the President of the United States June 29th, 1894, and the true and only corporate name of defendant as and in said act provided was "The Supreme Lodge Knights of Pythias," and that by that name it could sue and be sued, plead and be impleaded and by no other name. 51

Second. That the naming and designation of the defendant in above-entitled action by the plaintiffs in summons and complaint herein as "Supreme Lodge Knights of Pythias of the World" is a misnomer and such designation and naming of defendant in above-entitled action as "Supreme Lodge Knights of Pythias of the World" is not the true and lawful corporate name of corporation proceeded against as defendant in above-entitled action. 52

For a fourth and further answer and defense to the cause of action set forth in the complaint of plaintiff herein, the defendant upon information and belief alleges:

First. That this defendant is a fraternal organization duly organized under an act of Congress of the

United States duly approved by the President of the
 53 United States, June 29, 1894, and that its principal
 office for the transaction of business is in the city of
 Indianapolis, State of Indiana.

Second. That the defendant, corporation above
 named by the terms and provisions of the act under
 and by which it was incorporated did succeed to the
 name, acquired all the rights and assumed all the lia-
 bilities of a then existing corporation of identical name,
 54 viz., the Supreme Lodge Knights of Pythias, and that
 the said act incorporating the said defendant in that
 respect did provide as follows:

“That all claims, accounts, debts, things in
 action or other matters of business of whatever
 nature now existing for or against the present
 Supreme Lodge Knights of Pythias, mentioned in
 section 1 of this act, shall survive and succeed to
 and against the body corporate and politic hereby
 55 created, provided, that nothing contained herein
 shall be construed to extend the operation of any
 law which provides for the extinguishing of claims
 or contracts by limitations of time.”

Third. That in and by the terms of the act of Con-
 gress incorporating defendant as aforesaid it was fur-
 ther provided in said act as follows:

“That said corporation shall have a constitu-
 56 tion and shall have power to amend the same at
 pleasure, provided, that such constitution or
 amendments thereof do not conflict with the laws
 of the United States or of any State.”

Fourth. That the said act of Congress incorporat-
 ing defendant did specify that the purposes of said in-
 corporation were fraternal and benevolent.

Fifth. That the corporation to which defendant corporation did succeed was a fraternal and benevolent corporation having a charter and by-laws and was incorporated under the laws of Congress under date of August 5th, 1870. 57

Sixth. That said corporation, Supreme Lodge Knights of Pythias, which was succeeded by defendant, did by its charter, lawfully amended therefor on March 7, 1882, establish and create a division of its order termed the Endowment Rank, now known as the Insurance Department Knights of Pythias of the World. 58

Seventh. That on the 26th day of October, 1889, there was in said endowment rank, Insurance Department Knights of Pythias of the World, a division of such Endowment Rank rated according to amount payable to members thereof known as Fourth Class.

Eighth. That on or about the 26th day of October, 1889, the plaintiff in the above-entitled action did make written application to become a member of such fourth class such Endowment Rank aforesaid and in said written application did covenant and agree as follows: 59

"I hereby agree that I will punctually pay all dues and assessments for which I may become liable, and that I will be governed, and this contract shall be controlled by all the laws, rules and regulations of the order governing this Rank, now in force, or that may hereafter be enacted by the Supreme Lodge Knights of Pythias of the World, or submit to the penalties therein. To all of which I willingly and freely subscribe." 60

Ninth. That thereafter and on the 7th of November, 1889, the said Endowment Rank of Knights of Pythias of the World, by authority of the then existing corporation, Supreme Lodge Knights of Pythias,

- 61 did issue unto plaintiff above named its certificate or policy under and by the terms of which there was payable to the beneficiaries therein named, the two children of plaintiff, the sum of three thousand dollars, upon the payment by plaintiff to said Endowment Rank all assessments and dues required to be paid by the rules and by-laws governing said Endowment Rank and the full compliance on part of plaintiff with all the rules and laws of Endowment Rank then in force or to be thereafter enacted, and which certificate provided
- 62 further that in case one assessment levied upon all members of said fourth class in the Endowment Rank, failed to equal the total death benefits payable under said certificate there should be paid to said beneficiaries thereunder the amount which could be collected by one assessment upon all the members in the said fourth class, less ten per centum thereof for expenses of collecting the same.

- 63 Tenth. That the provision in the rules and by-laws of said Endowment Rank governing and controlling the amount of assessments, which plaintiff as a member of fourth class thereof was required to pay was as follows on the 26th day of October, 1889:

Article 4, Section 1.

- 64 "Each member of the Endowment Rank shall, on presenting himself for obligation, pay to the Secretary of the Section, in accordance with his age and the amount of endowment applied for, monthly assessment as provided in the following table and shall continue to pay the same amount each month thereafter as long as he remains a member of the Endowment Rank, *unless otherwise provided for by the Supreme Lodge Knights of Pythias of the World.*"

And that the table annexed to said by-laws did provide for a payment at that time from plaintiff of the sum of three dollars monthly thereafter. 65

Eleventh. That heretofore and in or about the month of August, 1910, the above-named defendant under and in pursuance of the authority conferred upon it by its act of incorporation and in pursuance of the power reserved to it in previous by-laws and rules to provide for changes in amount of assessments in relation to the members known as the Fourth Class, Endowment Rank, and in the manner of and according to its constitution and by-laws, did make and adopt among others the following rule and by-law governing amount of assessment payable by members of Fourth Class, Endowment Rank: 66

“To the end that every certificate in the Fourth Class of the Insurance Department shall upon maturity be paid in full according to the tenor thereof, the Supreme Lodge enacts and declares that: 67

“Every member of the Fourth Class of the Insurance Department at the time when this statute takes effect and who continues his membership until December 31, 1910, shall pay a monthly payment for each month thereafter, beginning with the month of January, A. D. 1911, monthly payments in accordance with his attained age and occupation and the amount of benefit, provided for in his certificate, on January 1, A. D. 1911, as fixed by the table herein, unless and until otherwise provided by enactments of the Supreme Lodge.” 68

The table provided for a monthly payment from plaintiff of \$14.70 after January 1st, 1911.

Twelfth. That in or about the month of August, 1910, certain other by-laws were lawfully adopted by :

above-named defendant which directed the Board of Control to notify all members of the said Fourth Class
69 of such change in rate of monthly assessment and also to notify said members of said Fourth Class that in lieu of paying said assessments after January 1, 1911, any member in said Fourth Class could elect to change his insurance policy or certificate, which said elective methods were communicated by defendant to plaintiff and were as follows:

70 "1. (Paragraphs "B" and "C.") Every member of the Fourth Class on January 1, A. D. 1911, shall be re-rated according to his attained age and occupation and amount of benefit provided for in his certificate, in accordance with the table of rates therein provided and his monthly rates thereafter to be as provided for by said table, unless the member shall elect to take some one of the options provided for in said section 468. If you do not elect to take one of the options
71 and desire to continue the amount of your present certificate for the remainder of your life, then, beginning with the month of January, 1911, and for each month thereafter your monthly payment will be \$14.70. If you accept one of the following options, the above paragraph will not apply to you.

"The options are as follows:

72 "2. (Paragraph "D.") You may surrender your present certificate and accept a certificate in lieu thereof and for the amount thereof, which will insure you for the term of five (5) years for the monthly payment of \$7.95 or for the term of ten (10) years for the same amount for the monthly payment of \$8.30. At the end of the five (5) or ten (10) years period, whichever you elect to accept, the certificate will terminate and

you will no longer be insured under it. If you should die while the certificate is in force and 73 before its termination, the amount thereof will be paid to your beneficiary.

“ 3. (Paragraph “E.”) Or you may elect to continue making the same payment which you now pay each month, to wit, \$, from and after January 1, 1911, and upon surrendering your present certificate, a new one will be issued to you for the amount of the old certificate, but it 74 will terminate on the day of , A. D. 19 , your present rate being sufficient to give you life insurance protection until said date, but no longer. If you die within that time the amount of the certificate, if in force, will be paid to your beneficiary, but it will expire on that date and you will no longer be insured under it.

“ 4. (Paragraph “F.”) Or if you so elect, 75 you may have your present certificate scaled down to such a sum as the rates that you are now paying will provide insurance for the whole period of your life, regardless of when your death occurs, and your rate under this plan will be just what it is now, that is, \$4.80 per each month, but the amount of your certificate will be \$978.00, instead of its present amount, and if kept in force until your death, regardless of when death occurs, the 76 amount thereof will be paid your beneficiary.

“ 5. (Paragraph “G.”) Or if you elect to retain the present certificate that you have and are unwilling to accept any of the other options, you may have a lien placed against your certificate, the amount of such lien to be deducted at the maturity of the certificate, whenever the same matures by your death, and you may continue to

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pay the same rate that you are now paying, to wit, \$4.80, per each month. Under this option the lien will be \$2,200.00 and will be deducted from the face of your certificate at maturity, leaving the balance of \$978.00 to be paid to your beneficiary.

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“ 6. (Paragraph “ H.”) Or you may elect to continue the full amount of your insurance protection for the whole period of your life and to be re-rated as of your age at nearest birthday January 1, 1911, and if you are unable to make the payment of \$14.70, that will be due from you under said certificate as each monthly payment from and after January 1, 1911, and will satisfy the Board that you are unable to pay the whole of said monthly payment in cash, then you may pay in cash the sum of \$7.95 for each month and the sum of \$6.75 for each month will be charged against your certificate together with 5 per centum per annum as interest, which said sums not so paid by you with the interest, whatever they aggregate at the time of the maturity of your certificate, will be deducted from the face amount thereof. You may, if you choose, relieve your certificate of this lien, or any portion thereof, at any time by paying the amount of same or any portion thereof.

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80

“ 7. Or you may, if you choose, transfer the whole or any portion of your insurance from the Fourth to the Fifth Class, such transfer to be made without expense to you and without medical examination, but in the event of such transfer you will be re-rated at your attained age and in accordance with the plan in said Fifth Class to which you elect to transfer.

"You are required by said enactments of the Supreme Lodge to elect in writing on or before the first day of January, 1911, which of the options you will avail yourself of, and in the event you fail to make such election, your rates on January 1, 1911, will be automatically raised, as is stated in the first paragraph hereof to the sum of \$14.70, which sum will be due from you for each month thereafter, beginning with the month of January, 1911." 81

Thirteenth. That plaintiff has failed and neglected to elect any or either of said options so submitted to him by defendant and has failed and neglected to pay unto defendant the sums of money assessed against his certificate or policy of insurance under and in pursuance of the rule and by-law of the defendant requiring of plaintiff that he pay a monthly assessment of \$14.70 per month, upon his certificate or policy of insurance from the 1st day of January, 1911, which payments have become due and payable and plaintiff is in default in such payment. 82 83

For a fifth and further answer and defense to the cause of action set forth in the complaint of plaintiff in the above-entitled action, the defendant alleges, upon information and belief:

First. Realleges and reiterates the allegations set forth in from paragraphs designated "First" to "Tenth" both inclusive in the fourth answer and defense hereinbefore set forth with the same force and effect as if again repeated at length. 84

Second. That heretofore and on or about the 11th day of July, 1901, the above-named defendant under and in pursuance of the authority conferred upon it by its act of incorporation and in pursuance of the power reserved to it in previous by-laws and rules to provide

85 for changes in amount of assessments in relation to the members known as the Fourth Class Endowment Rank and in the manner of and in accordance with its constitution and by-laws, did make and adopt the following rule and by-law governing amount of assessments payable by members of Fourth Class Endowment Rank:

86 "Every member who is at present a member of the Endowment Rank and each applicant for membership in the Endowment Rank upon completion of his application, shall pay each month hereafter, as long as he remains a member of the Endowment rank, monthly payments as fixed by the table herein, in accordance with the age at which he has been immediately heretofore rated and in accordance with the amount of his endowment and occupation, so long as he shall remain a member of the Endowment Rank, *unless otherwise provided by enactment of the Supreme Lodge or Board of Control of the Endowment Rank Knights of Pythias.*"

87

Third. That under and by virtue of said last mentioned rule and by-law the monthly assessment of plaintiff upon his said certificate or policy of insurance was increased from the sum of three dollars per month to the sum of four dollars and eighty cents per month.

88 Fourth. That notice of said last mentioned by-law was duly given by defendant to plaintiff and plaintiff herein consented to the modification of his certificate or policy of insurance by the operation of said by-law and did thereafter and up to shortly before the commencement of the above-entitled action pay the amount of the assessment as provided for in said last mentioned by-law.

Fifth. Realleges the allegation contained in paragraphs designated "Eleventh," "Twelfth" and

"Thirteenth," of the fourth defense hereinbefore in this answer set forth the same as if the said allegations 89 were fully and at length set forth.

WHEREFORE, the defendant in the above-entitled action demands judgment for the dismissal of the complaint of the plaintiff therein upon the merits and for such other and further relief as to the Court may seem just and proper besides the costs of this action.

JOHN J. McCALL,

Attorney for Defendant. 90

Office and Post Office Address, 25 North Pearl
Street, Albany, N. Y.

STATE OF NEW YORK, CITY AND COUNTY OF ALBANY,
ss.:

John J. McCall, being duly sworn, says that he is the attorney for the defendant in the above-entitled action, that he has read the foregoing answer and 91 knows the contents thereof and that the same is true of his own knowledge, except as to the matters therein stated to be alleged upon information and belief and as to those matters he believes it to be true.

That the reason that the foregoing answer is not verified by the defendant therein named is that the above-named defendant is a foreign corporation, that none of its officers or agents are within the county of Albany, where deponent resides and has his office and 92 that the information upon which deponent made the foregoing answer and verified the same was derived from copies of the certificate of and application for the certificate of insurance mentioned in the answer and complaint in the above-entitled action and copies of the correspondence had between plaintiff and defendant

and the act of incorporation and constitution and by-laws of defendant.

93

JOHN J. McCALL.

Sworn to before me this 6th
day of February, 1911.

NICHOLAS J. BARRY, JR.,
Notary Public,
Albany County, N. Y.

94

STATE OF NEW YORK, MONTGOMERY COUNTY CLERK'S
OFFICE, ss.:

I, Henry Wagner, Jr., Clerk of said county and ex officio Clerk of the Supreme Court in and for said county, do hereby certify that I have compared the foregoing copy of an answer with the copy thereof filed in this office February 7th, 1911, and that the same is a correct transcript therefrom and of the whole of such copy.

95

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, at Fonda, this 7th day of February, 1911.

HENRY WAGNER, JR.,
Clerk.

(L. s.)

By JNO. F. COLLINS,
Deputy Clerk.

Endorsed: Answer.

STATE OF NEW YORK.

SUPREME COURT — COUNTY OF MONTGOMERY. 97

ARTHUR V. H. SMYTH,	}
Plaintiff,	
vs.	
SUPREME LODGE KNIGHTS OF PYTHIAS OF THE WORLD, Defendant.	

To the Supreme Court of the State of New York:

98

The defendant above named, the Supreme Lodge Knights of Pythias, respectfully shows to this Court and alleges:

First. That the above-entitled action is a suit of a civil nature and that the amount involved and in dispute therein exceeds the sum of two thousand dollars (\$2,000), exclusive of interest and costs.

Second. That your petitioner, the defendant in the above-entitled cause, is a corporation duly created, existing, chartered and organized under and by virtue of an act of Congress of the United States, approved by the President June 29, 1904, and exists as a corporation by reason of said act and acts amendatory thereof, having its principal office in the city of Indianapolis, State of Indiana, and was at the time of the commencement of this suit and still is a resident of and a citizen of the State of Indiana and that said Arthur V. H. Smyth, plaintiff in the above-entitled cause, was and is at the time of the commencement of this suit, a resident of the city of Amsterdam, in the county of Montgomery and State of New York.

99

100

Third. Your petitioner further shows that under the express terms of said acts of Congress, your petitioner was authorized to engage in business as a fra-

101 ternal and benevolent organization and authorized to have a constitution with the power to amend the same at pleasure, and in that behalf your petitioner states that the right, authority and power of your petitioner to make amendments under said act of Congress and acts amendatory thereof is involved in this suit and that this suit is one arising under the laws of the United States.

102 Fourth. Your petitioner further alleges that the time for the defendant to answer the complaint of the plaintiff in the above-entitled action expires on the 8th day of February, 1911.

Fifth. That your petitioner states that it desires to move the above-entitled suit and action into the United States Circuit Court in and for the Northern Judicial District of New York.

103 Sixth. Your petitioner offers herewith a good and sufficient surety for entering into the Circuit Court of the United States for the Second Judicial Circuit and Northern District of New York, on the first day of its next session, a copy duly certified of the record of this suit and for paying all costs that may be awarded by the said Circuit Court if said court should hold that this suit was wrongfully and improperly removed thereto and your petitioner therefor prays to this Honorable Court to proceed no further herein except to make order of removal required by law and to accept
104 said bond and surety and cause the record herein to be removed into the Circuit Court of the United States in and for the Second Judicial Circuit and Northern Judicial District of New York.

And your petitioner will ever so pray.

THE SUPREME LODGE KNIGHTS OF PYTHIAS.

By JOHN J. McCALL, its Attorney.

STATE OF NEW YORK, CITY AND COUNTY OF ALBANY,
ss.:

John J. McCall, being duly sworn, says that he is 105
the representative and attorney for the Supreme Lodge,
Knights of Pythias, petitioner in the foregoing petition
and attorney for them in the above-entitled action,
that he has heard read the foregoing petition and knows
the contents thereof and that the same is true of his
own knowledge except as to the matters therein stated
to be alleged upon information and belief and as to
those matters he believes it to be true.

Deponent further states that the reason why the fore- 106
going petition is not verified by the petitioner therein
named is that the above-named petitioner and defend-
ant is a foreign corporation, that none of its officers or
agents are within the county of Albany where de-
ponent resides and has his office and that the informa-
tion upon which deponent makes said petition is de-
rived from correspondence and data and documents
furnished to deponent by the officers of the defendant
and petitioner above named and from documents and 107
copies of the same from the principal office of the de-
fendant and petitioner.

JOHN J. MCCALL.

Sworn to before me this 4th
day of February, 1911.

NICHOLAS J. BARRY, JR.,
Notary Public,
Albany Co.

108

STATE OF NEW YORK, MONTGOMERY COUNTY CLERK'S
OFFICE, ss.:

I, Henry Wagner, Jr., Clerk of said county, and
ex officio Clerk of the Supreme Court in and for said
county, do hereby certify that I have compared the
foregoing copy of a petition for removal with the orig-
inal thereof filed in this office February 7, 1911, and

that the same is a correct transcript therefrom and of the whole of such original.

109

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, at Fonda, this 7th day of February, 1911.

HENRY WAGNER, JR.,

Clerk.

(L. S.)

By JNO. F. COLLINS,

Deputy Clerk.

110 Endorsed: Petition for Removal.

At a Special Term of the Supreme Court of the State of New York, held in and for the County of Schenectady, at the Court House in the City of Schenectady, on the 7th day of February, 1911.

111 Present: HON. HENRY T. KELLOGG, Justice.

SUPREME COURT — COUNTY OF MONTGOMERY.

ARTHUR V. H. SMYTH,
Plaintiff,

vs.

SUPREME LODGE KNIGHTS OF
PYTHIAS OF THE WORLD,
Defendant.

112

The defendant in the above-entitled action having within the time provided by law, filed his petition for removal of the above cause to the Second Judicial Circuit Court of the United States for the Northern Judicial District in the State of New York, and having at the same time offered a bond in the sum of one thousand dollars (\$1,000.00) with good and sufficient

surety thereon pursuant to the statute and conditioned according to law;

113

Now, therefore, on motion of John J. McCall, attorney for the above-named defendant, it is hereby

ORDERED, That said bond so filed be approved and the prayer of said petition as filed be granted and that the above-entitled cause be removed for trial to the next Circuit Court of the United States, for the Second Judicial Circuit in and for the Northern District of New York pursuant to the statutes of the United States 114 in such case made and provided, and that all further proceedings of this Court be stayed, and the Clerk of this Court in and for the county of Montgomery is hereby directed to transmit to the said Circuit Court of the United States for the Second Judicial Circuit held in and for the Northern District of New York, a copy of the record of the above-entitled cause.

Enter in Montgomery county.

115

H. T. KELLOGG,

Justice Supreme Court.

Entered February 7th, 1911.

H. WAGNER, JR.,

Clerk.

STATE OF NEW YORK, MONTGOMERY COUNTY CLERK'S
OFFICE, ss.:

116

I, Henry Wagner, Jr., Clerk of said county and ex officio Clerk of the Supreme Court in and for said county, do hereby certify that I have compared the foregoing copy of Order with the original thereof filed and entered in this office February 7th, 1911, and that the same is a correct transcript therefrom and of the whole of such original.

IN WITNESS WHEREOF, I have hereunto set my hand
and affixed my official seal, at Fonda, this 7th day of
117 February, 1911.

HENRY WAGNER, JR.,

Clerk.

(L. S.)

By JNO. F. COLLINS,

Deputy Clerk.

Endorsed: Order.

118

STATE OF NEW YORK.

SUPREME COURT — COUNTY OF MONTGOMERY.

ARTHUR V. H. SMYTH,
Plaintiff,
against

119 SUPREME LODGE KNIGHTS OF
PYTHIAS OF THE WORLD,
Defendant.

120 I, Henry Wagner, Jr., Clerk of the county of Mont-
gomery and Clerk of the Supreme and County Courts
held in and for said county, do hereby certify that the
annexed Petition for Removal, Bond for Removal,
Order of Removal, Summons and Complaint, Notice
of Retainer, Affidavit and Order Extending Time to
Answer or otherwise move in above-entitled action
and Answer in above-entitled action compose the entire
record on file in the office of the Clerk of the county of
Montgomery at the time of this certificate, all of the
papers mentioned herein are severally certified and
annexed hereto.

IN WITNESS WHEREOF, I have hereunto set my hand
and affixed the seal of said county and courts, at Fonda,
New York, this 7th day of February, 1911. 121

HENRY WAGNER, JR.,
Clerk.

(L. S.) By JNO. F. COLLINS,
Deputy Clerk.

Endorsed: Certification of Record; G. W. R.,
U. S. J., filed Feb. 23, 1911. W. S. Doolittle, Clerk.

122

UNITED STATES CIRCUIT COURT.

NORTHERN DISTRICT OF NEW YORK.

ARTHUR V. H. SMYTH	}
vs.	
SUPREME LODGE KNIGHTS OF	
PYTHIAS OF THE WORLD.	

123

To the Clerk of the United States Circuit Court of
the Northern District of New York:

You will please enter my appearance as solicitor for
the defendant in the above-entitled cause.

Dated, Albany, N. Y., February 22, 1911.

Yours, etc.,

JOHN J. MCCALL, 124
Solicitor for Defendant.

Office and Post Office Address, 25 North Pearl
Street, Albany, N. Y.

Endorsed: Appearance, filed February 23, 1911.
W. S. Doolittle, Clerk.

Plaintiff's Testimony and Exhibits.

125 UNITED STATES DISTRICT COURT.
NORTHERN DISTRICT OF NEW YORK.

	ARTHUR V. H. SMYTH,	}
	Plaintiff,	
	vs.	
126	SUPREME LODGE KNIGHTS OF PYTHIAS, Defendant.	

This action came on for trial at a term of the United States District Court, Northern District of New York, held at the Post Office Building, in the City of Albany, N. Y., on the 24th day of April, 1912, before Honorable George W. Ray, Judge.

Appearances:

127 R. J. SANSON, Esq., attorney for plaintiff.
Hon. H. V. BORST, of counsel.
JOHN J. MCCALL, Esq., attorney for defendant.
Hon. WALTER E. WARD, of counsel.

128 It is stipulated that the correct name of the defendant is Supreme Lodge Knights of Pythias, and that the pleadings may be amended accordingly. That since the issuing of the policy, the name of the defendant has been changed by the omission of the words, "of the world."

Judge Borst: The application of Dr. A. V. H. Smyth, the plaintiff, for insurance in the lodge of which he was a member is offered in evidence, the execution of which is admitted, the same to be produced hereafter when Mr. McCall gets it.

Received. Marked Plaintiff's Exhibit "A."

Judge Borst: The plaintiff also offers the policy itself. 129

Received. Marked Plaintiff's Exhibit "B."

Mr. McCall: We would like to move here an objection that the policy and application does not comprise the entire contract; that is, the by-laws should follow with it.

The Court: Of course, I shall hold when a man is a member of such a society, and he applies for and takes insurance, that the constitution and by-laws existing at the time are a part of the contract and may go in evidence with it. 130

ARTHUR V. H. SMYTH, plaintiff, being duly sworn, testified:

EXAMINED BY JUDGE BORST:

I reside at the city of Amsterdam, this State, and have for a great many years. I am a physician and surgeon and have been for thirty-five years. I am a member of the Knights of Pythias of Chuctanunda Lodge. That lodge is located at Amsterdam, N. Y. I have been a member of that lodge since 1888, I think. I am at present a member of that lodge. 131

Q. Since you have been a member of that lodge, have you always been a member in good standing?

Mr. McCall: Object to the question as irrelevant, immaterial, incompetent and calling for a conclusion. 132

The Court: He may state whether he has always paid his dues.

Q. Have you always paid your dues?

A. Always have. Since I have been a member of that lodge the amount of dues called for by the lodge has never been changed and I have paid my dues to

133 next October. I have paid them each time as they came due and I was required to pay them. I paid them in advance annually. I have never been suspended from the lodge. No charges have ever been presented against me of any kind. I have attended the meetings from time to time, semi-occasionally. In 1889, I was acquainted with Jacob L. Fredendall. He is the gentleman whose name appears upon this policy, Exhibit "B." That is his signature.

134 Mr. McCall: I object to the question because it is irrelevant, immaterial. The certificate or policy is in evidence and not objected to. We admit the proper execution of it.

I knew Mr. Fredendall. He resided at Amsterdam. He resides there at the present time.

Q. At that time, at the time of the issuing of this policy, do you recall whether Mr. Fredendall was there at that time in Amsterdam?

135 A. Why I could not tell you that except his signature is there.

Q. Who gave you this policy?

A. Why, to the best of my recollection, it was handed me by some member of the lodge, the secretary, I think; I could not swear to that.

When the policy was delivered to me a book purporting to be the constitution and general laws of the Endowment Rank, Knights of Pythias, was delivered to me at the same time with the policy.

136

Paper marked Plaintiff's Exhibit "C" shown witness.

This little pamphlet, Exhibit "C," is the pamphlet that was delivered to me about that time. It was delivered to me with the policy, at the same time the

policy was delivered; the same night. A paper which 137
is marked Plaintiff's Exhibit "D" was paper delivered to me also.

Q. Did you receive that at the time you received Exhibit "C" and the policy?

A. Either at that time or just prior to it. The reason I know that is in regard to my age. My age at the time this policy was taken by me was thirty-seven. I have retained this Exhibit "C" and Exhibit "D" 138
ever since. I mean the by-laws, have always been with the policy ever since retained by me. From time to time I have been called upon to pay assessments under the policy. I have paid assessments always, every time. The assessments were paid to Mr. Fredendall.

Q. The same gentleman that is named on the policy?

A. The same one, yes. Mr. Fredendall always collected the assessments.

Mr. McCall: I object to the evidence as to the payment of the assessments without proof as to how much the assessments were and the exact payments of them; irrelevant, immaterial, calling for a conclusion. 139

When I first commenced paying, at the time I received the policy, I paid per month one dollar per thousand. The policy was for \$3,000. I paid \$1.00 a thousand; \$3.00 each assessment, that is, per month. I paid in that way for I cannot tell you exactly how long. 140
It is a number of years. Continued down until about 1901; I should think it was about 1901 or 1902, somewhere along there. I cannot tell you exactly. I should say it was some five or six years.

Q. I show you a paper marked Plaintiff's Exhibit "E." Did you receive that paper at one time?

141 A. This is the one that was with my policy all the time. I received one like it. I cannot say this is the one.

I received a similar one about that time. Well, as I say, about five years after 1888; after I joined the society and took out my policy; about 1901. I am unable to say just the year. I could not say positively.

Q. Then what occurred, Mr. Smyth?

142 A. Then I got a notice that they were about to create an endowment fund or fund of some kind or a surplus fund or endowment fund, and that they were going to increase the amount of the assessment to \$1.80, I think it was, or \$1.60, something like that. It was an increase anyway; I have forgotten what the amount was.

Mr. Ward: I object to that statement unless he produces the written document.

143 It is admitted that Exhibit "E" is the statement referred to by the witness in the last answer.

From that time what was done with reference to the payment of assessments was they were collected monthly just the same as before and I paid the \$1.60 or \$1.80, I paid the \$1.60 a month on a thousand instead of the \$1.00 a month which I previously paid. That continued down until last January, I think it was, or just prior to that, January, 1911.

144 Q. Doctor, I show you Exhibit "F." Did you receive this Exhibit "F"?

A. Yes.

Judge Borst: We offer this paper, Exhibit "F," in evidence.

Mr. McCall: The sending of which is admitted in the answer.

And with it there was accompanied with that Exhibit "F" the papers which are lettered respectively in print, "C," "D," "E," "F," "G," and "H." I received them and they accompanied Exhibit "F." They are all fastened now to Exhibit "F," but at the time they came, they came in one envelope separate. I continued to pay the monthly assessments down until the time I received this notice, Exhibit "F." After I received Exhibit "F" with reference to paying or offering to pay, until January, 1911, I paid my assessments at \$1.60 on each thousand and then I got this notice, Exhibit "F," whereby I would have to pay \$14 something a month. \$14.70, I have forgotten the exact figures. I refused to pay that. I offered Mr. Fredendall the usual amount of the assessment as my policy called for, \$4.60 a month. I offered it to Mr. Fredendall each month and he refused to take it, said he was so instructed. He said he had been instructed not to take it. I offered him the amounts that I had been paying prior to January, 1911, \$4.60; certainly \$4.80.

Adjournment to 2 p. m.

2 p. m., April 24, 1912.

DR. A. V. H. SMYTH, plaintiff, recalled.

CROSS-EXAMINATION.

EXAMINED BY MR. MCCALL:

I have been a member of the Knights of Pythias since 1898, I think; the date of that policy, 1888, I mean. At the time that I became a member of the Knights of Pythias, I joined this endowment rank.

- 149 I joined it for that purpose; I joined solely for that purpose; I had not been a member prior to the issuing of this policy long. There might be members of the order of the Knights of Pythias that are not members of this so-called insurance or endowment rank, but I do not know. I know that there are certain dues assessed against me as a member of the order of Knights of Pythias independent of any dues that may be levied and assessed against this policy.
- 150 And they were the dues to which I referred when I said my dues had all been paid up to next October, the yearly dues. Lodge dues, I mean when I say the yearly dues, separate and distinct from any assessments on this policy. This policy was delivered to me on or about its date, November 7, 1889. Prior to the delivery of that policy I had made a certain application in writing for it. An application was signed, how long before I could not say, whether it was on or before the
- 151 26th day of October, 1889. I really cannot say. It was not very long before. This application which I made contained answers made by me to the medical examiner. After certain blanks were filled on it, I signed it. I did not understand where that application was to be sent. I did understand it had to be sent away. I knew at the time that no member of that local lodge could issue the policy, that it had to be passed upon by some one else. Some time after that, this
- 152 policy was delivered to me. Who gave me this policy I could not tell you now, it was so long ago.

Q. I think you said something on your direct examination that the secretary gave it to you?

A. I presume the secretary gave it to me.

Q. Mr. Fredendall was secretary at that time?

A. I could not tell you that; I don't know, but I think that he has been secretary ever since I belonged to it.

My signature was attached to the policy. I do not recall as to whether or not I signed it before I received it. Before it was delivered to me I have no recollection of that whatever. After I signed it, I continued a member of the order and paid the dues. Certain papers were shown to me this morning by Judge Borst which I said were delivered to me by Mr. Fredendall, at the time he delivered this policy. What I mean by that is that those papers were delivered with the policy by whoever delivered the policy to me at that time. I don't know whether it was Mr. Fredendall or not. I simply assume it was on account of his signature being there. It was after I had made my application for the policy. And the policy had been signed and sent on to Amsterdam. At the time the policy was delivered to me those papers were handed to me undoubtedly by the secretary of the lodge, presumably by Mr. Fredendall; it is too long ago; I could not tell you. 153 154

Q. Whoever handed them to you handed them to you after your application had been made and your policy delivered to you? 155

A. They were certainly not handed to me before. I didn't see them at all before the application was made.

Q. Did you read your application at all?

A. I always read my insurance application. I could not recall at this length of time that the blank so signed by me contained this provision: "I hereby agree that I will punctually pay all dues and assessments for which I may become liable and that I will be governed and this contract shall be controlled by all the laws, rules and regulations of the order governing this rank now in force or that may hereafter be enacted by the Supreme Lodge Knights of Pythias of the World, or will submit to the penalties therein contained, to all of which I willingly and freely subscribe." 156

157 I did read it before I signed it. I always read an application. At the time that I signed it, I understood that I was to comply with the rules and orders of the order as they then existed. Certainly I did. I say I continued a member of the order from that time to the present time and attended the meetings occasionally. Very seldom. I know that this order of Knights of Pythias is a fraternal organization.

Q. And it has certain branches, lodges or sections,
158 does it not?

A. I could not say that I know that. I know it has different lodges.

I do not know whether that branch of the endowment rank has sections. I do not know as to the location or lodge. I paid \$3.00 a month under this policy. In my complaint, I believe I allege and set forth that you continued to pay \$3.00 a month until some time prior to January 1, 1910. That is not correct. I
159 didn't intend to say that. I paid \$4.60 for some time.

Q. You understood that the rate that you were paying was the rate established by the by-laws of the order.

A. I didn't understand that; no, sir.

Q. You didn't read your contract to find out how the rate was established or by whom?

A. This extra rate which I paid, is that what you refer to?

160 Q. No; the \$3.00.

A. I understood that, yes. I understood that was provided by the by-laws of the order. There was a change in the rate from \$3.00 to \$4.80 a month in respect to my policy that took place, I think, about after I had been a member at the \$3.00 rate for about four or five years, on or about July, 1901. That is simply my recollection. I could not give you any dates. But at any rate for some time previous to Jan-

uary 1, 1910, I have been paying at the rate of \$4.80 161
a month, which is equivalent to \$1.60 upon every thousand dollars of insurance mentioned in my certificate. I paid this \$4.80 until December, or January rather, 1911. During the continuance of this policy, in addition to these monthly payments, I have not paid any other assessments. That I recall.

Q. Can you state as to whether or not, of your own knowledge, any provision existed in the by-laws of the Knights of Pythias in respect to this endowment rank which would make you liable for any extra assessment provided such were levied? 162

A. I did not so understand it.

Q. Did you, in the month of February, 1909, pay an extra assessment?

A. You mean there were twelve assessments a year; you mean a thirteenth assessment in that year? Not that I know of; I might have. 163

Q. Did you pay such an extra assessment in the month of September, 1909?

A. If it was called, I undoubtedly did.

Q. The same is true as to March, May and July, 1910?

A. The same would be true. If any were called, I paid it. Whenever extra assessments were called for, if they were called for, prior to January 1, 1911, I paid them. I did know as to whether or not there were in the by-laws, rules of the order of the Knights of Pythias governing this endowment rank any provisions that required the members thereof to pay their monthly payments and assessments on or before the 20th of each month without notice to the secretary of the section. I understood that all assessments and dues were to be paid to the secretary or collector before the 20th of the month without notice. I paid the sum of 164

165 \$4.80 a month up to the first day of January, 1911, from 1901. Since that time I have not paid any money to the secretary of the section. I tendered him \$4.80. I did not ever at any time since January 1, 1911, and up to the time of the commencement of this action tender to him the sum of \$14.70. Plaintiff's Exhibit "F," purporting to be a notice to me to exercise certain options, was shown to me. I am acquainted with its contents. I never in writing or
166 otherwise, signified to the Supreme Lodge of Knights of Pythias, my intention to accept any one of those options. I received this by mail.

Q. Was there any other letters or any other documents accompanying this at the same time?

A. Schedule of rates, if I remember, the rate under the new plans.

Q. Was what you received a pamphlet similar to that? (Pamphlet shown witness.)

167 A. It might have been. I don't recognize it. I do not recall. This contains a schedule of rates. It might have been this paper. I cannot say.

Q. Can you state as to whether or not at the time that you received this paper marked Plaintiff's Exhibit "F," that you also received information that this raise of rates to \$14.70 a month was done pursuant to resolution of the Grand Lodge of the Supreme Lodge of Knights of Pythias.

168 Judge Borst: Object to that, as it is shown there was some other writing other than Exhibit "F" coming to his attention.

The Court: He may tell whether he was so informed or not. I don't permit it as proving that there was such a resolution.

Mr. McCall: It is offered for this purpose, that 169
when we do establish what the information sent to him
was, with his refusal to pay this extra assessment, that
he did it with his eyes open and knew he was refusing
to obey a resolution of the Grand Lodge.

The Court: If it was binding on him, and they had
the right to do it, and it bound him, why, of course, it
is competent to show that he knew of it. It is compe-
tent to show that he knew of it. 170

A. I read this application, Exhibit "F." It was
after I read this application that I refused to pay the
\$14.70 a month. I knew that none of the officers of
my local lodge have the right to issue any policies of
insurance. I knew they had no authority; I also
knew that no officer of the local lodge would have a
right to reject the first application that I made; that it
had to go to the Supreme Lodge. I knew that this
Supreme Lodge Knights of Pythias, at stated periods, 171
has conventions. I never attended any. The delegates
are sent to those conventions. I mean the Supreme
Lodge; I believe they are elected by the delegates from
the State Grand Lodge; I understand so. The State
Grand Lodge was composed of delegates elected from
the subordinate lodges, I suppose, of course. The
lodge to which I belong in the usual course sent its
delegates to the State Lodge undoubtedly. 172

- 173 JACOB C. FREDENDALL, being duly sworn on behalf of plaintiff, testified:

EXAMINED BY JUDGE BORST:

- I reside at Amsterdam and have for a great many years. I was residing there in 1889. At that time I was a member of the Knights of Pythias lodge. I was a member of Chuctanunda Lodge Number 100. I knew Doctor Smyth at that time. I do recall his taking out a policy of insurance of \$3,000 in the Endowment Rank of that order. Calling my attention to Exhibit "B," which is the policy that is referred to in this proceeding. I have seen that policy. That is my handwriting on there and the name which purports to be mine upon the policy; I put my name there. The position I did occupy in the Endowment Rank of this order at that time was Secretary and Treasurer, that is Secretary and Treasurer of the Endowment Rank, Knights of Pythias. I was then located at Amsterdam, and I have been located there ever since. In my position as Secretary and Treasurer I did take applications for insurance. I took Doctor Smyth's application and thereafter that application was sent to the home office. The application, in the first place, I generally gave the applicant an application blank. He went to the physician and had it filled out and brought it to me signed by himself. I sent the application on at that time; I think we sent them to the Medical Examiner in Chief. Of course, later —(counsel interrupting). At the home office. Then thereafter there was a policy issued which was this policy in question here. This is the policy. The policies came to me and I took it to the doctor. I took it to Doctor Smyth and got his signature, then I added mine to it, and then gave him the policy.

Q. At the time of the delivery of the policy, did you deliver him a copy of the by-laws? 177

A. I think probably I did, because that was — because generally I delivered a copy of the by-laws with the policy.

Q. Is that Exhibit "C" a copy of the by-laws?

A. That is a copy of our by-laws.

Judge Borst: I offer this copy Exhibit "C" in evidence.

178

Q. Mr. Fredendall, can you say whether this is the identical copy that you gave the doctor?

A. I could not.

Q. But it was a copy of the by-laws that was in existence at that time?

A. That was a copy of our by-laws.

Q. You cannot say that you give him this identical copy?

A. No, I could not; that was, of course, a great many years ago. I could not say that was the identical copy I gave him; I could not say whether it was or not.

179

Q. Now, Mr. Fredendall, at that time, was it the practice, was it your practice as secretary and treasurer, to deliver with or before the delivery of a policy, a copy of the by-laws to the person who was taking out a policy?

Mr. McCall: Object to it as immaterial, irrelevant 180 and calling for a conclusion.

The Court: He may state.

A. In some instances we would and some instances we would not. Sometimes a man would want to take out an application and would want to see the by-laws; would want to look them over. In other cases, they would not ask for them.

181 BY THE COURT:

Q. Did you give him a copy?

A. That I could not say.

Q. Have you any recollection on the subject?

A. No; it was too long ago for me to remember whether I delivered him a copy of the by-laws or not.

182 Q. Can you state whether those that you had at that time, whether this copy here, whether that is a copy of the by-laws and constitution as they then existed at the time this policy was taken out?

A. It is as far as I had knowledge of it.

Q. Where did you get them?

A. They were sent to me from the home office.

Q. Sent to you from the home office?

A. Yes.

JUDGE BORST: I now offer this copy Exhibit "C" in evidence.

183

MR. MCCALL: We object to it on the ground that it is not the constitution and by-laws that were in existence and in operation at the time this policy was issued and that the witness had no authority to issue these particular by-laws and constitution at that time in the form that it now is and it is not the by-laws referred to in the application and in the policy.

Objection overruled.

184

BY THE COURT:

Q. Had they changed them since that time?

A. That I don't remember. I probably gave him the copy of the by-laws that I had at that time. If I had had a later copy, I would have given him that.

Q. Is it true that when you gave them out at all you gave the latest out that had been sent to you? 185

A. Yes, sir.

BY JUDGE BORST:

I did receive literature from the home office of the company. And in receiving literature, when there was a new copy of the by-laws out I generally would get them, as far as I remember. They would not send them in large quantities to me, ten or twelve perhaps, something like that. If any one inquired or wanted them I would give them a copy of them. There are different sections of this Endowment Rank. There was a section located at Amsterdam, only the one; the number of that section was 279. I was secretary and treasurer of that section. My duties with reference to the collection of assessments were I collected all assessments of moneys and forwarded on to the proper authorities. With reference to Dr. Smyth, the assessments paid by him were paid in to me. I sent it on, the money. I would get a receipt for what moneys I sent from the home office, not for the Doctor Smyth money, not for any individual receipts; I would get a receipt for so many members, such an amount. The endowment rank did send out literature and at times sent it to me and to the members of the section. There was at times; that is, sent to the individual members. 186

Q. I show you a paper marked Plaintiff's Exhibit "G," which is called on its face, *Knights of Pythias News*. Do you know what that is? 188

A. I get a copy of it each month. It comes from the Insurance Department of the Knights of Pythias, this endowment rank.

Q. And I notice this is dated October 10, 1910. Were they sent out at that time?

189 A. Well, now, I could not say. There was a great many of them. Each member of the section gets a copy of that paper. They were sent to each member.

Q. Did you know of the reserve fund, so called?

A. Why, yes; they, of course, had a reserve fund.

Q. And did you know of the increased assessments that brought about or was to bring about a reserve fund?

A. Yes.

190 Q. And that was organized about 1901? Or about that time?

A. About that time; of course, I could not say just.

Q. Is this paper, Exhibit "G," the official or one of the official papers of this endowment rank?

A. So I understand it.

Mr. McCall: Object to it as incompetent, immaterial, calling for the conclusion of the witness.

191 Judge Borst: We offer this Exhibit "G," pages 6 and 7, in evidence.

Mr. McCall: Object to it as incompetent, immaterial, irrelevant and as no evidence that it was issued by the defendant.

192 Stipulated that the defendant's department having charge of the insurance of members is now known as the Insurance Department instead of as in the policy, the Board of Control.

Q. Was Mr. Hunt in charge of the Insurance Department, at its head?

A. At the present time.

Q. Has been for some time?

A. No, for a few years. Of course, he is the president of the Board of Control and Insurance Department.

Q. And has been since 1910?

193

A. Yes.

Q. Was in 1910?

A. Yes.

Q. And were these papers sent out from the home office issued by the Endowment Rank?

Mr. McCall: I object to the question unless the witness knows.

A. I do not.

194

Q. Did you receive them from time to time?

A. We get them once a month, each member is supposed to get them and I suppose they do.

Q. Papers of similar nature and with the same heading?

A. Yes.

The Court: I should hardly want to hold that this paper proved that the Board of Control did submit that report; that they considered it; it seems to me you would have to prove it some other way. I will receive it for what it is worth. 195

Counsel has agreed that the Court may receive it at this time and determine as to its materiality later on, and if the Court should reach the conclusion that it is not material, he can make a note striking it out of the case, or if he reaches the conclusion that if we offer no further proof on the part of the plaintiff that it does not bind the defendant, it may be stricken out of the case, and it may be contradicted. 196

197 CROSS-EXAMINATION BY MR. McCALL:

I say I am the secretary and treasurer of the Knights of Pythias. I refer to the local section at Amsterdam. My duties are such as are defined by the by-laws of the order. You do not understand me to say that I have a personal recollection that at the time I delivered this policy to Mr. Smyth, I also handed him a copy of the by-laws; I did not. As a matter of fact, I do not recall anything at all about it. I could not say positively.

Q. Now, Mr. Fredendall, an application — we refer to this particular application of Doctor Smyth's — was first presented to you, was it not?

A. In the first place, I gave him the application. I got these applications and I presented one to the applicant. I have a blank form of application and I present one to the applicant. There is part that he fills out and part that he has to go to the examining physician to have filled out. After that has been done, it is brought to me. I send it to headquarters and they issue the policy.

Q. That is the fact as to whether or not the contract of insurance shall be issued depends upon the action of the Supreme Lodge or the parties to whom you sent this application?

A. It depends on whether they pass the medical examination or not. They are to determine that. Their medical examiner in chief. No policies are issued by the local lodge itself, nor no officer thereof has any right to do it.

Q. Mr. Fredendall, do I understand you to swear that the by-laws which were identified by you were in fact the by-laws in effect in October, 1889?

A. To the best of my knowledge they were.

Q. Do you know whether or not there were a set of 201
by-laws adopted by the Board of Control in July,
1888?

A. I do not.

Q. Have you any knowledge on that subject
whatever?

A. I have not.

Q. The rules of the order governing this Endow-
ment Rank could have been changed in 1888 without
your knowledge? 202

Judge Borst: Object to it as calling for a conclusion.

BY THE COURT:

Q. Does the word section refer to territory?

A. Each lodge has a section, that is, all lodges do
not, but some of them have no sections for insurance;
most of them do.

Q. When you say a section, do you mean an insur-
ance department? 203

A. That is the local insurance department in the
local lodge.

Q. Each lodge embraces a certain territory, does it
not?

A. No; we have three lodges in Amsterdam, but
they all belong to the one section. The members of the
three lodges join the one section.

Q. What do you mean by the section; the insurance? 204

A. That is the insurance. The section refers to in-
surance, not territory.

BY MR. McCALL:

Q. You have no recollection that you ever at any
time saw any of the by-laws adopted in 1888?

A. No.

205 By the Court: If there was any change in 1888, I suppose the witness means to say that he has no recollection of having been notified of that at the time this policy was issued, and that he was not present when the change was made, is that right?

A. That is right.

206 It is stipulated that this action was commenced on the 31st day of December, 1910, by delivering a copy of the summons and complaint to the Superintendent of Insurance at his office in the city of Albany.

Judge Borst: I offer Exhibit "D" in evidence.

Mr. McCall: Objected to as irrelevant and immaterial and no evidence that it was issued by the defendant.

207 The Court: I will receive it.
Plaintiff rests.

Judge Ward: Defendant moves that the complaint be dismissed and that judgment be given for the defendant upon the following grounds:

1. The complaint does not state facts sufficient to constitute a cause of action.
- 208 2. That the proofs offered in evidence do not show facts sufficient to constitute a cause of action.
3. That the application signed by the plaintiff authorized the changes and amendments to the constitution and by-laws which might be made.
4. That the amendments made to the by-laws by the defendant authorized the changes in the assessments and offered options to the plaintiff and authorized the

officers of the defendant to transmit certain options to the plaintiff.

5. That the plaintiff waived all his rights to object to the changes in the assessment made by the defendant upon the plaintiff and is estopped from disputing the validity of the amendments and changes in the by-laws and constitution and changes of the amounts of assessments by agreeing to be bound by such assessments in his application and by paying an increased assessment after the policy was issued. 209

Motion denied. 210

The further trial of the case was postponed by consent to give defendant an opportunity to take depositions of witnesses and submit same. For this purpose forty days time was granted defendant; plaintiff to have twenty days thereafter to take or submit evidence in opposition. Depositions to be taken on the usual notice. The case to be finally submitted on or before July 15th, 1912. 211

PLAINTIFF'S EXHIBIT "A."

213

(Copy.)

APPLICATION AND MEDICAL EXAMINER'S CERTIFICATE.

No. 23868.

OF

A. V. H. SMYTH.

Age, 37. Monthly Assessment, \$3.00.

214

TO

Section No. 279.

ENDOWMENT RANK

K. of P.

Certificate Issued 18...

AMOUNT OF ENDOWMENT

\$3,000.

215

Approved Oct. 30, 1889.

L. A. QUERNER, M. D.,

Medical Examiner in Chief.

216

Instructions.

All blanks on this part of the Application are to be filled by the Supreme Secretary and Medical Examiner in Chief. Secretaries and Medical Examiners of Sections will see that all other blanks are properly filled, and all questions are answered, before forwarding the application.

CERTIFICATE OF LODGE.

This is to Certify, That Brother Knight A. V. H. Smyth is a member of the Knights Rank of Chuc-
tanunda Lodge No. 100 of the Grand Jurisdiction of
New York, City or Town of Amsterdam, in good stand-
ing, and that his dues are paid to October 1st, 1889. 217

Signed J. FREDENDALL,
Master of Finance Pro Tem.

Attest: A. P. VAN ALSTYRE,
Keeper of Records and Seal.

(Lodge Seal.)

218

CERTIFICATE OF OBLIGATION.

I Hereby Certify, That the Obligation was admin-
istered to the within named applicant, on the 2d day
of November, 1889.

JACOB L. FREDENDALL, *Secretary.*

(Section Seal.)

TABLE SHOWING AVERAGE WEIGHT IN PROPORTION TO
HEIGHT. 219

With Maximum and Minimum Allowances.

Height.		Average Weight.	Maximum Weight.	Minimum Weight.	
5 ft.	1 in.	120 lbs.	144 lbs.	96 lbs.	
5 "	2 "	125 "	150 "	100 "	
5 "	3 "	130 "	156 "	104 "	
5 "	4 "	135 "	162 "	108 "	220
5 "	5 "	140 "	168 "	112 "	
5 "	6 "	143 "	172 "	114 "	
5 "	7 "	145 "	174 "	116 "	
5 "	8 "	148 "	178 "	118 "	
5 "	9 "	155 "	186 "	124 "	
5 "	10 "	160 "	192 "	128 "	
5 "	11 "	165 "	198 "	132 "	
6 "	00 "	170 "	204 "	136 "	

TABLE OF MONTHLY ASSESSMENTS.

221		\$1,000.	\$2,000.	\$3,000.
	Age.	Amount.	Amount.	Amount.
	21	\$0 70	\$1 40	\$2 10
	22	70	1 40	2 10
	23	70	1 40	2 10
	24	70	1 40	2 10
	25	75	1 50	2 25
	26	75	1 50	2 25
	27	80	1 60	2 40
222	28	80	1 60	2 40
	29	80	1 60	2 40
	30	80	1 60	2 40
	31	85	1 70	2 55
	32	90	1 80	2 70
	33	90	1 80	2 70
	34	95	1 90	2 85
	35	95	1 90	2 85
	36	1 00	2 00	3 00
223	37	1 00	2 00	3 00
	38	1 05	2 10	3 15
	39	1 10	2 20	3 30
	40	1 10	2 20	3 30
	41	1 15	2 30	3 45
	42	1 20	2 40	3 60
	43	1 25	2 50	3 75
	44	1 30	2 60	3 90
	45	1 35	2 70	4 05
224	46	1 40	2 80	4 20
	47	1 45	2 90	4 35
	48	1 50	3 00	4 50
	49	1 55	3 10	4 65
	50	1 60	3 20	4 80

Address of Supreme Secretary: W. B. Kennedy,
 Supreme Sec'y, Rooms 37, 38 and 39 Commerce Build-
 ing, Chicago, Ill. 225

Address of Medical Examiner in Chief: Dr. L. A.
 Querner, 412 Race St., Cincinnati, O.

APPLICATION FOR MEMBERSHIP IN THE ENDOWMENT
 RANK, KNIGHTS OF PYTHIAS.

Fourth Class.

The undersigned is desirous of becoming a member
 of Section No. of the Endowment Rank 226
 of the Order of Knights of Pythias. This application
 will become part of the contract, if accepted.

*Questions to be Answered by the Applicant for En-
 dowment.*

1. A. Give your name in full and Post Office address.
 A. Arthur V. H. Smyth, Amsterdam, Mont.
 Co., N. Y.
 B. Present and previous occupation? (State kind 227
 of business.)
 B. Present, physician and surgeon. Previous,
 student.
 C. Are you married, single or widower?
 C. Widower.
2. Give the place and date of your birth.
 Born at Swansea, Wales, the 27th day of Dec.,
 1852. Age at nearest birthday, 37.
3. State, as far as you know, the following particulars 228
 in regard to your grand parents, parents,
 brothers and sisters:

229

FAMILY RECORD OF THE APPLICANT.	LIVING.		DEAD.			
	Age.	Health.	Age.	Cause of Death.	How Long Sick.	Previous Health.
Father.....			56	Pneumonia	3 days	Good
Father's father...		Unknown	Unknown	Unknown	Unknown	Unknown
Father's mother..		Unknown	Unknown	Unknown	Unknown	Unknown
Mother.....	65	Good				
Mother's father...			85	Senile decay	3 or 4 months	Good always
Mother's mother..			75	Senile decay	Don't know	Good always
Brothers.....	31	Good	1 yr.	Don't know	Don't know	Don't know
			2 yrs.	Scarlet fever	Don't know	Good
Sisters.....	30	Good	Don't know	Infantile disease	Don't know	Don't know

230

231 4. A. Have you now any Life Insurance or Endowment?

A. Yes.

B. If so, in what order or company? Give the names and amount in each.

B. Conn. Mutual, \$5,000; A. O. U. W., \$2,000; Aetna Life, \$5,000; Masonic Relief, \$1,000; Penn Mutual, \$2,000.

232 C. Have you ever applied to any society, company or agent for insurance without receiving a certificate or policy? If so, state full particulars.

C. No.

5. What amount of Endowment do you desire, \$1,000, \$2,000 or \$3,000?
\$3,000.

6. A. To whom do you want the Endowment paid?
Give name or names in full and Post Office
Address.

233

A.....

- B. State the relationship of the person or persons
to you.

B. I have two children who are my benefi-
ciaries.

NOTE CAREFULLY.—An applicant must designate as beneficiary, such person or persons as may be related to, or dependent upon him for support; or he may name a brother knight, his subordinate Lodge of the Knights of Pythias, his Section of the Endowment Rank, or his betrothed. See Article XII, Section 1, Endowment Rank Constitution.

234

*Read carefully the following Declaration and Agree-
ment, and observe its Import:*

I declare that I am not now a member of the Endowment Rank, Knights of Pythias, and have not been rejected as an applicant thereof. I declare, further-
more, that all of the above statements are true to the best of my knowledge and belief, and that I have not concealed or omitted to state anything regarding my health, past or present, affecting the expectancy of my life; and that I hereby consent and agree that any untrue statement made in this application or to the Medical Examiner, or any concealment of facts touching my health, or expectancy of life, or for failure or neglect to pay any or all assessments and dues as prescribed
by the laws of the Rank or Order, or for other causes, or voluntarily severing my connection with the Order, shall work a forfeiture to all my rights, and the rights of my heirs and beneficiaries to all benefits and privileges accruing to members of this Rank.

235

236

I hereby agree that I will punctually pay all dues and assessments for which I may become liable, and that I will be governed, and this contract shall be con-

- 237 trolled by all the laws, rules and regulations of the Order governing this Rank, now in force, or that may hereafter be enacted by the Supreme Lodge, Knights of Pythias of the World, or submit to the penalties therein contained. To all of which I willingly and freely subscribe.

Dated at Amsterdam, N. Y., this, the 26th day of Oct., 1889.

Signature of Applicant — ARTHUR V. H. SMYTH.

Attest:

- 238 *Secretary of Section No.*

INSTRUCTIONS TO MEDICAL EXAMINERS.

(Copy.)

- 239 The following rules have been adopted to guide Medical Examiners, and it is requested that they be carefully read, in order to avoid a lengthy correspondence with the Supreme Secretary's office or Medical Examiner in Chief, and thus cause a delay in the issuing of a certificate.

1st. *Examine in Private.*—All examinations must be strictly private; no person to be present but the examiner and applicant. The questions (*indicate where placed*) are to be written by the doctor, at the instance of the applicant, who warrants their correctness and offers them as a consideration of the contract.

- 240 2d. *Mail Examinations Direct.*—When the Examination is completed, the Application having been read by the Examiner (before examining applicant), must not be shown to any one, but is to be mailed direct to the Medical Examiner in Chief, Dr. L. A. Querner, No. 412 Race Street, Cincinnati, Ohio.

3d. *Habits and Hereditation.*—Make all necessary inquiries that suggest themselves to you in reference to family history, previous disease and habits, especially

in regard to the use of alcoholic stimulants in the past and at present, a note of which you will please make in your paper, *to show that your attention has been called to them.* Much delay and unnecessary correspondence frequently results from hastily written papers, especially when the causes of death of near relatives are given as "*childbirth,*" "*pneumonia,*" "*exposure,*" etc.; or, when the applicant in his personal history alludes to attacks of "*severe bronchitis,*" "*nervous prostration,*" "*neuralgia*"—matters which may be of no importance, or again may seriously affect the expectation of life of the individual. 241 242

The Medical Examiner will please note these carefully, and if necessary obtain an explanatory statement, attested by the applicant, which will save time and trouble.

4th. *Hernia and Vaccination.*—Please see also that the applicant has been successfully vaccinated; examine for evidences of hernia in cases that are supposed to be cured, or if a rupture exists, see that a properly fitting truss is worn. 243

5th. *Urine Tests Required.*—In all cases the urine must be examined by heat and nitric acid for albumen and the specific gravity taken, and the Examiner should satisfy himself that the urine he examines is that passed by the applicant (cases having occurred where healthy urine has been substituted for that which was albuminous). The specific gravity is required in all cases. 244

Should at any time the Examiner, owing to high specific gravity, gouty diathesis, phthisis, or diabetes in the family history, suspect sugar, he is expected to test for it, and note the result upon his examination paper.

6th. *Measure and Weigh.*—Please measure applicant in every case. Overweights and underweights should be accurately weighed by the Examiner.

7th. *Avoid Omissions.*— It is especially requested that the Examiner will read over the examination paper after it is completed by him, before he mails it to the Medical Examiner in Chief, as accidental omissions of important matters cause correspondence and delay.

245 8th. *Satisfy Yourself Fully.*— The medical portion of the Examination blank contains only those questions which are presumed to be sufficiently important to place the Examiner in a position to detect any disease, or disorder, which would affect the longevity of the applicant. They can be but suggestive, and it is presumed that when a risk is *recommended*, the Examiner has determined, to his entire satisfaction, by whatever additional means he has deemed necessary to employ, that the applicant is free from disease or the effects thereof.

246 9th. *Confidential Information.*— Correspondence with respect to an applicant for Endowment is *always* considered confidential by the Supreme Secretary or by the Medical Examiner in Chief.

247 Medical Examiners must not adhere too closely to the table given on back of this blank with reference to weight as compared to height. While giving actual weights and height, exercise good common sense as to your recommendations.

REPORT OF THE MEDICAL EXAMINER.

Questions to be Answered by the Applicant for Endowment. 249

Name of applicant—Arthur V. H. Smyth. Examined this 26th day of Oct., 1889, at Amsterdam, County of Montgomery, State of New York. Residence, Amsterdam, N. Y.

1. A. Are you now in good health? B. Have you been successfully vaccinated?
A. Yes. B. Yes. 250
2. A. How long since you were attended by a physician or professionally consulted one?
A. Have not had any.
B. For what disease?
B. No disease.
C. Give the name and residence of such physician.
C.
D. Give the name and residence of your medical adviser, or family physician, to whom you now refer for a certificate if deemed necessary. 251
D. S. H. French, Amsterdam, N. Y.
- E. Has any physician given an unfavorable opinion of your physical condition with reference to life insurance?
E. No.
- F. Have you ever been advised by a physician to try a change of climate to benefit your health? 252
F. No.
3. A. Have you hernia, or have you ever been ruptured?
A. No.
B. If so, do you now wear a suitable truss?
B. None.

- 253 C. Do you agree to wear one while insured in this Rank?
 C. If necessary.
4. A. To what extent do you now use intoxicating liquors?
 A. About two glasses of ale per week.
 B. Have you always been temperate in their use?
 (If not, explain the duration and extent of excess, and when last?)
 B. Yes.
- 254 5. A. Have you ever used opium, morphia, chloral, or any narcotic, unless regularly prescribed by a physician? (If so, explain fully.)
 A. No.
6. A. Have you had insanity, apoplexy, palsy, vertigo, convulsions, sunstroke, congestion, inflammation, or any other disorder of the brain or nervous system?
 A. *None except* — No.
- 255 B. Have you had asthma, consumption, spitting of blood, habitual cough and expectoration, palpitation, or any disease of the throat, heart or lungs?
 B. *None except* — No.
- C. Have you ever had cancer or any tumor, chronic diarrhoea, discharge from the ear, dropsy, fistula, gall-stones or gravel, open sores, inflammatory rheumatism, gout, syphilis, stricture, or any disease of the liver, kidneys, or bladder?
 C. *None except* — No.
- 256 D. Have you any defect in hearing or eyesight, any malformation or varicose veins?
 D. *None except* — No.

7. Have you had any illness or disease other than as stated by you above? (If so, state full particulars.) 257

None except — No.

Give here particulars as to date, duration, severity, etc., of each disease you have had.

.....

IT IS HEREBY AGREED: That all the foregoing statements and answers made to the Medical Examiner are warranted to be true, and are offered to the Endowment Rank as a consideration of the contract. 258

Signature of the Applicant — Arthur V. H. Smyth.

Witnessed by the Examiner — R. G. Johnson.

Questions to be Answered by the Medical Examiner.

1. A. How long have you personally known the applicant? Twelve years.
- B. Does the applicant's appearance indicate good health? Yes. 259
2. A. Applicant's height, 5 ft. 7 in. Weight, 140 lbs.
- B. Circumference of chest on full inspiration (under vest), 36½ in.
- C. Circumference of chest on forced expiration (under vest), 32½ in.
- D. Girth of abdomen, 31 in.
- E. Did you weigh and measure him? Yes.
- F. If not, are you satisfied that these figures are correct? Yes. 260
3. A. Complexion, light.
- B. Shape of chest, full.
- C. General figure, erect.
4. *Examination of Heart.*
- A. Is the heart's action clear, regular, and normal in its force?
- A. Yes.

- 261 B. Is there any murmur with either sound, or any enlargement of the heart?
 B. No.
 C. Is there any atheroma of the radial arteries?
 C. No.
 D. What is the character of the pulse as to fullness, compressibility and strength?
 D. Good.
 E. Is it regular?
 E. Yes.
- 262 F. What is the pulse rate?
 F.

5. *Examination of Lungs.*

- A. Is the respiration full and uniform throughout each lung?
 A. Yes.
 B. Is there freedom from unusual sound throughout each lung?
 B. Yes.
- 263 C. Is the percussion normal throughout each lung?
 C. Yes.
 D. Is there any disease of the throat, or any cough?
 D. No.

6. *Examination of the Brain, Digestive Organs, Etc.*

- 264 A. Has the applicant any disease or disorder of the brain or nervous system? No.
 B. Has the applicant ever had syphilis or stricture? No.
 C. Is there any eruption on the body? No.
 D. Is there any discharge from the ear? No.
 E. Is there any evidence of disease of the stomach, bowels or liver? No.
 F. Has he ever been ruptured? No.

G. If ruptured, does he wear a suitable truss?

No rupture.

H. Has he had any disease or disorder which affects his present health? No. 265

7. *Examination of Kidneys.* I hereby certify that the following is a result of a careful examination made by me of the applicant's urine:
A. Specific gravity, 10.20. B. Albumen, No. C. Sugar, No. D. Was the urine passed in your presence? Yes. E. Is the urine scanty or over-abundant? Neither.

8. Do you suspect predisposition, hereditary or acquired, to Phthisis? No. Cancer? No. Apoplexy? No. Or Kidney Disease? No. 266

9. Do you advise the acceptance of the risk by the Endowment Rank? ("Yes" or "No.") Yes.

Dated at Amsterdam this 26th day of Oct., 1889.

R. G. JOHNSON, M. D.,

Medical Examiner for Section No. 279.

PLEASE READ THIS PAPER over carefully before mailing to the Medical Examiner in Chief, in order that all the questions may be fully answered, thus avoiding correspondence and delay; and forward it immediately on completion. 267

PLAINTIFF'S EXHIBIT "B."

F.C.B.

F.C.B.

CERTIFICATE OF MEMBERSHIP.

No. 23868.

Fourth Class 268

\$3000.

Endowment Rank of the Order of Knights of Pythias.

THIS CERTIFIES, That Brother A. V. H. Smyth received the obligation of the Endowment Rank of the Order of Knights of Pythias in Section No. 279 on Nov. 2, 1889, and is a member in good standing in said Rank and in consideration of the representations

and declarations made in his application, bearing date of Oct. 26, 1889, which Application is made a part of
 269 this contract, and the payment of the prescribed Admission Fee; and in consideration of the payment hereafter to said Endowment Rank of all Assessments as required, and the full compliance with all the laws governing this Rank now in force, or that may hereafter be enacted and shall be in good standing under said laws the sum of THREE THOUSAND DOLLARS, will be paid by the SUPREME LODGE KNIGHTS OF PYTHIAS OF THE WORLD, to His Children as directed by said
 270 Brother in his application or to such other person or persons as he may subsequently direct, by change of Beneficiary entered upon the records of the Supreme Secretary of the Endowment Rank, upon due notice and proof of death, and good standing in the Rank at the time of death, and surrender of this Certificate.

PROVIDED, however, that the interest of any beneficiary, as designated by said Brother, or the interest
 271 of his or her heirs, shall cease and determine in case of the death of said beneficiary during the life time of such member, and in that case the benefit accruing under this Certificate shall be paid as provided for in Article XII, Section 1, of the Endowment Rank Constitution.

Provided, further, that if at the time of the death of said Brother the proceeds of one assessment on all members of the Endowment Rank, shall not be sufficient to pay in full the maximum amount of Endowment held under this Certificate, then there shall be
 272 paid an amount, less ten per cent for expenses, equal to the proceeds of one full assessment on all remaining members of the Endowment Rank, and the payment of such sum to the beneficiary or beneficiaries, mentioned herein, shall be in full of all claims and demands under and by virtue of this Certificate. And it is understood and agreed that any violation of the within-men-

tioned conditions, or the requirements of the laws in force governing this Rank, shall render this Certificate and all claims null and void, and that the said Supreme Lodge shall not be liable for the above sum or any part thereof. 273

IN WITNESS WHEREOF, We have hereunto subscribed our names and affixed the seal of the Supreme Lodge Knights of Pythias of the World.

Issued this 7th day of Nov., 1889 P.P. XXVI at Chicago, Illinois, and registered in Book 2 Folio 178.

J. A. HUISEY, 274

President Board of Control.

Attest:

(L. S.)

W. B. KENNEDY,

Supreme Secretary of the Endowment Rank.

I hereby accept this Certificate of membership subject to all the conditions therein contained.

Signature of Member ARTHUR V. H. SMYTH.

Dated at Amsterdam this 26 day of November, 1889. 275

Attest:

JACOB L. FREDENDALL,

Secretary Section No. 279 E. R.

F.C.B.

F.C.B.

PLAINTIFF'S EXHIBIT "C."

277

CONSTITUTION AND GENERAL LAWS
OF THE
ENDOWMENT RANK KNIGHTS OF PYTHIAS
OF THE WORLD.

Adopted at the Fourteenth Session of the Supreme
Lodge, held at Toronto, Ont.,

278

July 13th to 23rd, inclusive, 1886.

CONSTITUTION
OF
THE ENDOWMENT RANK
KNIGHTS OF PYTHIAS OF THE WORLD.

279

ARTICLE I.

Powers of the Supreme Lodge.

Section 1. It possesses the power, in accordance with the laws of the Order, to establish the Endowment Rank.

Section 2. To provide, print and furnish all forms, ceremonies, warrants, certificates, blanks of all kinds, official seals, and such supplies for sections of the Endowment Rank as may be necessary.

Section 3. To provide a revenue for the Endowment Rank from the sale of books, seals, and blanks of all kinds which may be adopted for use.

Section 4. To grant warrants to members of the Order of Knights of Pythias, duly qualified, upon proper application, for the establishment of Sections of the Endowment Rank, and to enact laws and regula-

tions, of general application, to establish and govern the same.

Section 5. To provide for, and define the duties of, the officers of the Endowment Rank and the Sections thereof, and to prescribe such additional duties for the regular officers of the Supreme Lodge as may be necessary. 281

Section 6. *To create, hold and disburse the funds of the Endowment Rank, under such regulations as it may deem necessary.*

Section 7. To decide all appeals from the action of those in authority. 282

Section 8. To issue certificates and provide for the payment of same under the laws, rules and regulations embodied in this Constitution in the sum of one thousand dollars (\$1,000), two thousand dollars (\$2,000), or three thousand dollars (\$3,000), as may be applied for under the laws of the Endowment Rank.

ARTICLE II.

283

Formation of Sections.

Section 1. Sections of the Endowment Rank shall exist by virtue of warrants issued by the Supreme Lodge through the Supreme Chancellor and the Supreme Secretary, in substance as follows:

FORM OF WARRANT.

Know ye, that the Supreme Chancellor, officers and members of the Supreme Lodge, Knights of Pythias of the World, reposing a special trust and confidence in the following Knights, in good standing in their Lodges, and their successors doth hereby grant and issue this warrant of authority, to institute a Section of the Endowment Rank at....., County of..... State of....., to be known and hailed as Section No., for the purpose of promulgating and practicing the great 284

principles of Pythian friendship, and especially to assist in the support of the families of deceased Knights,
 285 by the payment of a stipulated sum from the Endowment Fund of this Rank as provided by the law; and the said Section No., being duly and lawfully instituted, is hereby authorized and empowered to admit to membership into this Rank duly qualified Knights in good standing in their Lodges, according to the Laws of the Order, as promulgated from time to time by the Supreme Lodge for this Rank.

286 And the said Section No., of the Endowment Rank, doth solemnly promise to conform to and abide by the Laws of the Supreme Lodge, Knights of Pythias of the World, for the government of the Endowment Rank, and to obey its commands and enactment in all things.

In default thereof, this warrant of authority may be suspended or revoked by the Supreme Chancellor, and all benefits and rights held by each individual member
 287 under and by virtue of this warrant and his Endowment certificate, shall be forfeited.

Signed, sealed and attested by the proper officers of the Supreme Lodge.

Section 2. Petitions for Sections of the Endowment Rank must be made in the form provided by the Supreme Secretary, in substance as follows:

FORM OF PETITION FOR SECTIONS.

288 *To the Supreme Chancellor Knights of Pythias of the World:*

Sir and Brother: The undersigned, Knights of Pythias, in good standing, respectfully apply for a warrant to institute a Section of the Endowment Rank of the Knights of Pythias, under the jurisdiction of the Supreme Lodge Knights of Pythias of the World, and to be located at., County of., and State of, subject to the conditions of

the laws, rules and regulations of the Endowment Rank now in force, or which may hereafter be enacted; dated at, this day of, 289 A. D., 188. . .

Name		Amount of	Lodge of
Signature	Age.	Endowm't	which a
in full.	Residence.	(\$1,000, \$2,000	member.
		or \$3,000).	

Said petition shall contain the signatures of not less than five (5) Knights in good standing, not over fifty years of age, which shall be accompanied by a fee of 290 fifteen dollars (\$15.00) for the warrant and supplies; five dollars (\$5.00) of said fee shall be paid to the Supreme Lodge by the Supreme Secretary for the warrant, and ten dollars (\$10.00) shall be placed to the credit of the Expense Fund of the Endowment Rank.

Each applicant after entering his name upon the petition must make a regular application and be examined in accordance with the published "Rules for Medical Examiners," by a physician selected by the 291 petitioners, who shall prepare and sign the certificate attached to the application; said application and medical examiner's certificate shall be of the form furnished by the Supreme Secretary, which shall contain the following declaration and agreement. to be subscribed to by the applicant:

DECLARATION AND AGREEMENT.

I declare that I am not now a member of the Endow- 292 ment Rank, have not been rejected within the past six months. I declare, furthermore, that all of the above statements are in my handwriting, and are true to the best of my knowledge and belief, and that I have not concealed or omitted to state anything regarding my health, past or present, affecting the expectancy of my life; and that I hereby consent and agree that any untrue statement made in this application, or to the Medi-

293 cal Examiner, or any concealment of facts touching my health or expectancy of life, or for failure or neglect to pay assessments or dues as prescribed by the laws of the Rank or Order, or for other causes, or voluntarily severing my connection with the Order, shall work a forfeiture to all my rights, and the rights of my heirs and beneficiaries, to all benefits and privileges accruing to members of this Rank.

294 I hereby agree that I will punctually pay all dues and assessments, for which I may become liable, and that I will be governed, and this contract shall be controlled, by all the laws, rules and regulations of the Order governing this Rank, now in force, or that may hereafter be enacted, or submit to the penalties therein contained. To all of which I willingly and freely subscribe.

Dated at, this, the day of, 188..

295 Signed:, Member of..... Lodge No....., Knights of Pythias.
..... of, State of

Section 3. Sections of the Endowment Rank shall not be instituted unless there be present not less than five (5) applicants, whose applications have been approved by the Medical Examiner-in-Chief; and Sections shall not consist of less than three (3) members.

296 Section 4. When the membership of a Section is reduced to less than three (3), the Supreme Chancellor upon the request of the remaining members, or any of them, may issue to them Clearance Cards, countersigned by the Supreme Secretary subject to the requirements of the Constitution, when the holder's name shall be retained on the books of the Supreme Secretary, to whom all assessments shall be paid during the life of the Card.

Said Card shall be in substance as follows:

FORM OF CLEARANCE CARD.

This is to certify, that Bro..... was duly
 admitted a member of Section No....., of the En- 297
 dowment Rank, located at....., Jurisdiction
 of....., on the.....day of....., 188.,
 P. P., and has paid all assessments and
 other claims against him to this date, and is under no
 charge whatever.

We do hereby grant to said Brother this Clearance
 Card, and recommend his admission into any Section
 of the Endowment Rank, within six months from the 298
 date hereof, and no longer, upon his presenting evi-
 dence that he is a member of a Subordinate Lodge of
 Knights of Pythias in good standing and that he is not
 indebted for any assessments, and not otherwise.

Such Card may be deposited at any time within six
 months from its date, with the Secretary of any Section,
 and the name of the holders shall thereupon be entered
 on the roll of membership in said Section. But if such
 Card be not so deposited within the period above speci- 299
 fied, then the holder thereof shall forfeit his member-
 ship and interest in the Endowment Rank.

Section 5. Each Section of the Endowment Rank
 shall have an official seal of uniform design, and num-
 bered to correspond with the number of the Section,
 which seal shall be furnished by the Supreme Secretary,
 and shall be affixed to all official documents.

ARTICLE III.

300

Membership.

Section 1. An application for admission to mem-
 bership in the Endowment Rank must be a Knight of
 Pythias in good standing, not over fifty (50) years of
 age, be recommended by some competent practicing phy-
 sician in accordance with the published "Rules for
 Medical Examiners," on the form provided by the Su-
 preme Secretary, which must be approved by the Medi-

cal Examiner-in-Chief, and the necessary fees paid before he can take the obligation admitting him to membership.

Section 2. All former members of the Endowment Rank not over 60 years of age who have forfeited their membership from any cause, may be re-admitted by complying with the requirements of Section 1 of this Article and the surrender of the Endowment certificate formerly held.

Section 3. Membership in the Endowment Rank
302 shall begin with the date the obligation is taken by the
applicant.

The first monthly assessment shall be paid for the month in which the obligation is taken.

Section 4. The Supreme Lodge shall issue, or cause to be issued, to all members of the Endowment Rank who are entitled thereto, a certificate of membership in substance as follows:

303 FOURTH CLASS.

No. \$

CERTIFICATE OF MEMBERSHIP.

ENDOWMENT RANK OF THE ORDER OF KNIGHTS OF
PYTHIAS OF THE WORLD.

304 This certifies that Brother received the Endowment Rank of the Order of Knights of Pythias in Section No., on, 188., and is a member in good standing in said Rank. And in consideration of the representations and declarations made in his application, bearing date, 188., which application is made a part of this contract, and the payment of the prescribed admission fee; and in consideration of the payment hereafter to said Endowment Rank of *all assessments as required, and the full compliance with all the laws governing the rank now in force, or that may hereafter be enacted, and shall*

be in good standing under said laws, the sum of dollars will be paid by the Supreme Lodge Knights of Pythias of the World, to , 305
as directed by said Brother in his application, or to such other person or persons as he may subsequently direct by change of beneficiary entered upon the records of the Supreme Secretary of the Endowment Rank; upon due notice and proof of death, and good standing in the Rank at the time of death, and surrender of this certificate.

Provided, however, that if, at the time of the death of said brother, one monthly payment to the Endowment Fund by members holding an equal amount of endowment, shall not be sufficient to pay the amount of endowment held by said brother, the benefit to be paid in case of death shall be a sum equal to one payment to the Endowment Fund by each member holding an equal amount of endowment, and it is understood and agreed, that any violation of the within mentioned conditions, or the requirements of the laws in force governing this rank, shall render this certificate and all claims null and void, and that the said Supreme Lodge shall not be liable for the above sum or any part thereof. 306 307

In witness whereof we have hereunto subscribed our names and affixed the seal of the Supreme Lodge Knights of Pythias of the World.

.....
 Supreme Chancellor.

Attest:

308

.....,
 Supreme Keeper of Records and Seal.

Issued this day of , 188 . . . , P. P.
 , at , and registered in Book
 , Folio

.....
 Supreme Secretary.

I hereby accept this certificate of membership subject to all the conditions therein contained.

309

Dated.....

Attest:

(Seal)

Secretary of Section No.

ARTICLE IV.

310 *Monthly Assessments and Forfeiture of Certificates of Endowment.*

Section 1. Each member of the Endowment Rank shall, on presenting himself for obligation, pay to the Secretary of the Section, in accordance with his age and the amount of Endowment applied for, a monthly assessment, as provided in the following table, and shall continue to pay the same amount each month thereafter as long as he remains a member of the Endowment

311 Rank:

TABLE OF MONTHLY ASSESSMENTS.

	Age.	\$1,000. Amount.	\$2,000. Amount.	\$3,000. Amount.
	21	\$ 70	\$1 40	\$2 10
	22	70	1 40	2 10
	23	70	1 40	2 10
	24	70	1 40	2 10
312	25	75	1 50	2 25
	26	75	1 50	2 25
	27	80	1 60	2 40
	28	80	1 60	2 40
	29	80	1 60	2 40
	30	80	1 60	2 40
	31	85	1 70	2 55
	32	90	1 80	2 70
	33	90	1 80	2 70

Age.	\$1,000. Amount.	\$2,000. Amount.	\$3,000. Amount.	
34	95	1 90	2 85	313
35	95	1 90	2 85	
36	1 00	2 00	3 00	
37	1 00	2 00	3 00	
38	1 05	2 10	3 15	
39	1 10	2 20	3 30	
40	1 10	2 20	3 30	
41	1 15	2 30	3 45	
42	1 20	2 40	3 60	
43	1 25	2 50	3 75	314
44	1 30	2 60	3 90	
45	1 35	2 70	4 05	
46	1 40	2 80	4 20	
47	1 45	2 90	4 35	
48	1 50	3 00	4 50	
49	1 55	3 10	4 65	
50	1 60	3 20	4 80	
51	1 65	3 30	4 95	315
52	1 75	3 50	4 25	
53	1 80	3 60	5 40	
54	1 90	3 80	5 70	
55	2 00	4 00	6 00	
56	2 10	4 20	6 30	
57	2 20	4 40	6 60	
58	2 30	4 60	6 90	
59	2 40	4 80	7 20	
60	2 55	5 10	7 65	316

Section 2. Whenever one monthly assessment by members holding an equal amount of endowment shall not be sufficient to pay the amount of endowment held by a member, the benefit to be paid in case of death shall be a sum equal to one assessment by each member holding an equal amount of endowment.

Section 3. Monthly assessments of members holding certificates of Endowment in the Fourth Class shall
 317 be due and payable to the Secretary of the Section without notice, on the first day of each and every month; and a failure to make such payment on or before the tenth day of the month shall cause, from and after such date, a forfeiture of the certificate of Endowment and all right, title and interest such member or his beneficiaries may have in and to the same, and membership shall cease absolutely.

318 Section 4. The Secretary of a Section shall forward to the Supreme Secretary the monthly assessments collected, immediately after the tenth day of each and every month.

If such monthly assessment is not received by the Supreme Secretary on or before the twenty-fifth day of the same month, demand shall be made by him on the officers of the Section for the amount of the same.

If the assessment for which demand has been made
 319 is not paid to the Supreme Secretary within thirty days after such demand has been made, the Section so failing to pay shall be suspended by the Supreme Chancellor, upon report in writing being made to him by the Supreme Secretary of such failure, and the entire membership of such Section shall individually stand suspended from membership in the Endowment Rank, and shall forfeit all right, title and interest in and to their Endowment Certificates. Provided, that a Section
 320 whose membership has forfeited their Endowment, and whose Warrant has been thereby suspended, shall regain all rights as a Section, and any members thereof, not less than three, shall regain full rights and privileges held previous to forfeiture, if within sixty days from suspension of Warrant said Section pay to the Supreme Secretary the amount of all assessments accrued upon said members. In case of the suspension of any Section of the Endowment Rank, for any cause,

notice thereof shall forthwith be mailed to the several officers and members of such Section by the Supreme Secretary. 321

Section 5. Less than three members of a Section whose Warrant has been so suspended may, upon the payment to the Supreme Secretary of all accrued assessments due from them, and fifty cents each for a Clearance Card, regain membership, and all rights and privileges attached thereto, whereupon Clearance Cards will be issued to them, and such members shall be held subject to the requirements of Article II, Section 4, of this Constitution. 322

ARTICLE V.

Warrants and Supplies.

Section 1. All blank petitions for authority to institute Sections of the Endowment Rank shall be furnished by the Supreme Secretary.

Section 2. The Supreme Chancellor shall have power to grant Warrants to Sections during the recess of the Supreme Lodge, and to use such measures as may be necessary to institute the same. 323

Section 3. All warrants, cards, certificates, account books, notices, receipts, assessment reports, and any and all blanks necessary, shall emanate from the Supreme Lodge.

Section 4. The supplies for the use of a Section, consisting of one seal, one set of books (ledger, cash book, record, assessment roll, and membership register), twenty-five blank applications for membership, twenty-five remittance blanks, twenty-five receipt cards, fifty envelopes (two sizes), twelve copies of "Laws," six death notices, "Rules for Medical Examiners," and "Obligation and Installation Ceremonies," two copies each; and two blank bonds for Secretaries, together with such circulars of instruction, printed re- 324

ports, etc., as are necessary, are furnished for the sum of ten dollars (\$10).

325

All subsequent supplies required by Sections and the preliminary blanks for organization of Sections shall be furnished by the Supreme Secretary upon application free of charge.

"Quarterly Statements" and "Annual Reports" shall be furnished to the officers of Sections free of charge.

326

Section 5. *The power to adopt any additional forms, alter or amend any of the laws or the business details connected with the Endowment Rank, is vested in the Supreme Lodge exclusively, and it shall be the duty of that body to preserve uniformity in the workings of the Rank in detail, and to require on the part of all Sections a strict conformity therewith.*

ARTICLE VI.

Endowment Rank Funds.

327

Section 1. The funds of the Endowment Rank shall be as follows:

The Endowment Fund, which shall be derived from all the monthly assessments *and from special assessments when necessary.*

The Expense Fund, which shall be derived from the Membership Fees, Certificate Fees, Clearance Card Fees, and from the sale of supplies to Sections.

328

The Emergency Fund, which shall be derived from the amount remaining in the Endowment Fund at the end of the month, as hereinafter provided.

Section 2. The Endowment Fund shall be for the purpose of paying the legitimate death liability, in accordance with the laws, rules and regulations of the Endowment Rank, and for paying any deficiency in the Expense Fund that may exist by reason of said Expense Fund being exhausted.

So much of said Endowment Fund as is not required to pay the current death liability, and the deficiency in the Expense Fund, shall at the end of the month be transferred to the Emergency Fund. 329

The Expense Fund shall be for the purpose of paying the general expenses of the Endowment Rank, in accordance with the laws, rules and regulations of said Rank.

Should the Fund not be sufficient to pay said expenses, the deficiency may be drawn from the Endowment Fund, by the direction of the Supreme Chancellor duly attested by the Supreme Secretary. 330

Any surplus or balance in excess of one thousand (\$1,000) dollars, remaining in said Fund at the end of each fiscal year shall be transferred to the credit of the Endowment Fund.

The Emergency Fund shall be held by the Supreme Master of Exchequer, and shall be subject to the orders of the Supreme Chancellor attested by the Supreme Secretary to pay any deficiency that may exist in the Endowment Fund. 331

The Board of Control shall have power to direct the investment of such part of said Emergency Fund as they may deem wise and proper, when the amount in said Fund will justify it.

All investments shall be placed in the hands of the Supreme Master of Exchequer as the custodian of all Funds.

Section 3. *Assessments may be ordered by the Board of Control whenever required by the necessities of the Endowment Rank.* 332

Said special assessments shall be governed by the same laws, rules and regulations as are set forth for the payment and collection of the regular monthly assessments, except that said special assessments shall be issued on the 15th day of the month, and shall be due and payable by the members to the Secretary of the

Section, within thirty (30) days thereafter, who shall forward the same to the Supreme Secretary at once.

333

ARTICLE VII.

Duties of Supreme Lodge Officers — Supreme Chancellor.

Section 1. The Supreme Chancellor, in addition to the duties prescribed for him in the Supreme Lodge Constitution, shall have supervision over the Endowment Rank and all Sections of the same, and a right to suspend such Sections as fail to pay their assessments or neglect to conform to the Constitution or Laws prescribed for their government. He shall supervise the issuance of all documents connected with the details of the work of the Rank, and sign officially such as require his signature.

334

He shall sign all orders on the Supreme Master of Exchequer, drawn in accordance with the laws of the Endowment Rank.

He shall have power, in times of epidemic, to prohibit the admission of members into Sections located in infected localities.

335

He shall have power in case of the death, resignation, or total inability of the Supreme Secretary or Supreme Master of Exchequer, to perform their duties, to appoint a member of the Supreme Lodge, who shall also be a member of the Endowment Rank, to act as Supreme Secretary or Supreme Master of Exchequer pro tem, as the case may be, requiring a good and sufficient bond in the sum fixed by the Supreme Lodge for said officers.

336

Supreme Secretary Endowment Rank.

Section 2. The Supreme Secretary of the Endowment Rank shall prepare and attest all warrants for Sections of the Endowment Rank, issued by order of the Supreme Chancellor, and shall keep a register thereof.

He shall keep the following official records:

A register of the membership of the Endowment Rank; 337

A register of the membership by Sections with the Postoffice address of the members;

A register showing change of beneficiaries;

A register of duplicate certificates issued;

A register of all applications rejected by the Medical Examiner-in-Chief;

A register of deaths.

He shall receive all money due the Endowment Rank and shall transmit the same to the Supreme Master of Exchequer, at least semi-monthly, and shall issue and attest all orders drawn on the Supreme Master of Exchequer for the disbursement of the funds of the Endowment Rank. He shall keep the financial books of the office in such manner as will show each transaction clearly and distinctly. 338

He shall report monthly to the Supreme Chancellor his office expenses.

He shall report quarterly to the Supreme Chancellor a synopsis of the business of the Endowment Rank. 339

He shall make an annual report to the Supreme Lodge when in session, and the year when not in session to the Supreme Chancellor, together with such recommendations concerning the Endowment Rank as he may deem proper.

He shall submit his books and records for inspection whenever required to do so by the Supreme Chancellor.

He shall be a member of the Supreme Lodge and of the Endowment Rank, and shall be elected at the time, in the manner, and for the period prescribed for Supreme Lodge officers. 340

For use in his official correspondence, he shall be authorized to adopt a seal with appropriate design emblematic of the Endowment Rank, to be approved by the Board of Control.

He shall receive such compensation, payable out of the Expense Fund of the Endowment Rank, as the Supreme Lodge may from time to time determine.

Before entering upon the discharge of his duties, he shall enter into and acknowledge a bond in the penalty of fifty thousand dollars, payable to the Supreme Lodge Knights of Pythias of the World, with not less than five sureties deemed sufficient by said Supreme Lodge, and conditioned for the faithful discharge of his official duties as Supreme Secretary of the Endowment Rank, and in the event of the death of one or more of his bondsmen he shall immediately notify the Board of Control, who shall require a new bond with sufficient bondsmen.

Supreme Master of Exchequer.

Section 3. The Supreme Master of Exchequer shall, in addition to the duties prescribed by the Supreme Lodge Constitution, have charge of all funds belonging to the Endowment Rank.

He shall receive from the Supreme Secretary all moneys for said Rank, and shall credit the same to the proper account.

He shall pay all orders drawn upon him by the Supreme Chancellor, attested by the Supreme Secretary, if there be in his hands a sufficient sum of money belonging to the fund against which said orders are drawn.

He shall keep a cash account of the Endowment, Expense and Emergency Funds of the Rank.

He shall report to the Supreme Chancellor quarterly the amount received and disbursed, and the amount on hand, if any, of all funds of the Rank. He shall report monthly to the Supreme Chancellor his office expenses.

He shall make an annual report to the Supreme Lodge when in session, and the year when not in session to the Supreme Chancellor. He shall submit his

books, etc., for inspection when required so to do by the Supreme Chancellor.

For his services to the Endowment Rank, he shall receive such compensation, payable out of the Expense Fund of said Rank, as the Supreme Lodge may, from time to time, determine. 345

Before entering upon the discharge of his duties he shall enter into and acknowledge a bond in the penalty of one hundred thousand dollars, payable to the Supreme Lodge Knights of Pythias of the World, with not less than five sureties deemed sufficient by said Supreme Lodge, and conditioned for the faithful discharge of his duties in connection with the Endowment Rank. Provided, That no surety shall be accepted on such bond, who is surety on any other bond, relating to any other Fund of the Supreme Lodge, and in the event of the death of one or more of his bondsmen he shall immediately notify the Board of Control, who shall require a new bond with sufficient bondsmen. 346

Medical Examiner-in-Chief.

347

Section 4. The Medical Examiner-in-Chief shall be a member of the Endowment Rank; he shall be appointed by the Supreme Chancellor, and shall serve until the close of the current biennial term, or until his successor is duly appointed.

He shall examine all applications for membership, and, if approved by the local Medical Examiner, and not disqualified under the "Rules for Medical Examiners," nor from any other cause, approve the same. 348

He shall forward all rejected applications to the Supreme Secretary to be registered and filed. He shall keep a complete register of all applications passed upon by him, together with his final action, which shall at all times be subject to the inspection of the Supreme Chancellor, or the Finance Committee.

For his services he shall receive fifty (50) cents for each application passed upon, to be paid by the
 349 applicant.

He shall report to the Supreme Lodge at each regular session the number of applications passed upon, whether approved or rejected, together with such information and recommendations as he may deem necessary.

ARTICLE VIII.

Board of Control.

Section 1. The Supreme Chancellor (who shall be
 350 ex officio chairman) and two members of the Supreme Lodge, who are members of the Endowment Rank, and who shall be appointed by the Supreme Lodge Trustees, shall constitute a Board of Control. Said Board shall decide all questions of doubt and irregularity that may be submitted by the Supreme Chancellor, the Supreme Secretary, or the Supreme Master of Exchequer.

They shall direct the investment of all money of the
 351 Endowment Fund, not required for current liability, and which has been set aside from time to time as an Emergency Fund when the amount in said Fund will justify it.

Section 2. The Board of Control shall have the power to annul any certificate of Endowment when, upon investigation, they find that said certificate has been secured by misrepresentation or fraud, and perform such other duties as the Supreme Lodge may from
 352 time to time prescribe.

ARTICLE IX.

Finance Committee.

Section 1. The Finance Committee of the Supreme Lodge shall examine the reports, books and accounts of the Supreme Secretary, Supreme Master of Exchequer, and Medical Examiner-in-Chief, whenever required to do so by the Supreme Lodge or the Supreme Chancel-

lor, and shall submit a report of said examination to the Supreme Lodge when in session, and the year when not in session to the Supreme Chancellor, and to perform such other duties as may be required by the Supreme Lodge or the Supreme Chancellor. 353

ARTICLE X.

All the laws, forms and business details now governing the First, Second and Third Classes of the Endowment Rank shall be in full force and effect so long as membership in any one or all of these Classes exist, except as herein otherwise provided. 354

ARTICLE XI.

Amendments.

These laws may be altered or amended at any regular session of the Supreme Lodge Knights of Pythias of the World, by a two-thirds vote.

ARTICLE I.

Name, Meetings, Quorum, Etc.

Section 1. Each section shall be known as Section No. of the Endowment Rank Knights of Pythias of the World. 355

Section 2. Meetings for the transaction of official Section business shall be held quarterly, in January, April, July and October of each year, at such time and place as may be fixed by the by-laws.

A meeting shall also be held in December of each year for the election of a President, Vice-President, Secretary and Medical Examiner, who shall constitute the officers of a Section, to serve for the ensuing year. Special meetings, when necessary, may be held upon the call of the President, or at the request of two members of the Section. 356

Section 3. Three members shall constitute a quorum.

357 In the absence of both President and Vice-President,
any member may be called to preside.

ARTICLE II.

Application for Membership.

358 Section 1. Each application for membership of the
prescribed form must be addressed to a Section of the
Endowment Rank. It must be accompanied by a cer-
tificate from the Master of Finance of the Lodge to
which the applicant belongs that he is not in arrears
for dues. The medical examination must be made
359 within a period not greater than sixty days prior to the
submission of the application to the Medical Examiner-
in-Chief. The President (or, in his absence, the Vice-
President) and the Secretary of the Section shall also
certify, upon such application, that the declarations
made therein and to the Medical Examiner are true to
the best of their belief. A fee of one dollar for each
\$1,000 Endowment applied for must be paid to the
Secretary of the Section, and the application only for-
359 warded to the Medical Examiner-in-Chief, together
with 50 cents as his fee, to be paid by the applicant;
when returned by that officer approved, the President
or any Section officer obligates the applicant, the Secre-
tary certifies to the date when such obligation has been
taken, on the application, and forwards it with the re-
quired fee to the Supreme Secretary under the provi-
sions of Art. III, of the Constitution.

360 Section 2. A member desiring to increase his En-
dowment from \$1,000 to \$2,000 or \$3,000, or from
\$2,000 to \$3,000, must make application to the Sec-
tion of which he is a member on a special blank pro-
vided for that purpose by the Supreme Secretary, and
pay a fee of one (1) dollar for each \$1,000 Endowment
applied for; said application, together with 50 cents
as his fee, to be paid by the member, must be sent to
the Medical-Examiner-in-Chief by the Secretary for his

action, who shall return it to the Secretary if approved, the Secretary shall forward said application, together with the required fee and the original membership certificate attached, to the Supreme Secretary, who will issue a new certificate for the full amount desired. 361

Such increase of Endowment shall require a monthly payment, to be graded in accordance with the age of the applicant at the time the application for increase was made, which shall be added to the monthly payment required under the original certificate.

Section 3. A member desiring to decrease his Endowment from \$3,000 to \$2,000 or \$1,000, or from \$2,000 to \$1,000, shall make application to the Section of which he is a member on a blank as provided by the Supreme Secretary, when the Secretary shall forward said application with the original membership certificate attached, and a fee of fifty (50) cents to the Supreme Secretary who shall issue a new certificate for the amount desired, and the monthly payment of the applicant shall be reduced accordingly. 362 363

ARTICLE III.

Resignations, Suspensions from Lodges, Appeals, Etc.

Section 1. A member may at any time resign his membership in the Endowment Rank, provided there are no charges against him, financial or otherwise. Such resignations shall cause a forfeiture of all amounts paid into, and all claims upon, the funds of the Endowment Rank. 364

Section 2. Whenever a member of the Endowment Rank withdraws from his Lodge, or whenever his membership therein ceases, from any cause other than death, he thereby severs his connection with this Rank, and forfeits all his right, title and interest in and to the Endowment Fund; Provided, that a member who takes a withdrawal card may retain his membership in

the Section and his interest in the Endowment Fund for a period of six months by paying regularly all assessments. Upon the deposit of said card with another Lodge, he shall at once notify the Secretary of his Section, and shall forward to the Supreme Secretary a certificate from the Master of Finance of the Lodge in which said card is deposited; and provided further, that if a Lodge becomes defunct, and a member thereof, or a member holding a withdrawal card, by reason of age or disability is unable to connect himself with a Subordinate Lodge, he shall not lose his membership in the Section nor his interest in the Endowment Fund, so long as he shall regularly pay the assessments required by law.

Section 3. If a member of a Section is suspended from his Lodge from any cause, and an appeal is taken from the action of the Lodge, such action stands in full force until reversed by the Grand or Supreme Lodge, and membership in the Endowment Rank ceases at the time of such suspension. Should the action of the Lodge be reversed by higher authority, the standing of the member shall be the same as if no action had been taken, and he shall pay all assessments made during such suspension and pending said appeal. Pending said appeal, assessment notices shall be sent regularly to him as if a member, and he shall have the privilege of paying the same to the Secretary of the Section. The payment of such assessment shall not give the suspended Brother any rights in the Endowment Rank. The Secretary shall receive them at the Brother's request and as his agent. They shall not be forwarded to the Supreme Secretary, but shall be retained by the Secretary of the Section, to be credited to the Brother on account of assessments due by him upon a reversal of his suspension or to be returned to him if it be affirmed.

Section 4. Every member, in case of removal or protracted absence from home, shall notify the Secretary of his Section of the fact, giving his postoffice address, and street and number of residence when necessary. 369

ARTICLE IV.

Officers and Their Duties.

Section 1. The officers of a Section shall be a President, Vice-President, Secretary and Medical Examiner.

Section 2. The officers shall be elected annually at the stated meeting in December, and shall enter upon the discharge of their duties on the 1st day of January following, and shall continue in the discharge of their duties until their successors are qualified; Provided, however, that the Secretary shall first enter into bond as hereinafter provided. Any member in good standing shall be eligible to any office in the Section. 370

Section 3. The President shall preside at all meetings of the Section.

He shall see that the laws of the Endowment Rank are complied with by the officers and members of his Section. 371

He shall sign and certify to the correctness of all remittance blanks, and shall supervise the transmittal of all funds to the Supreme Secretary.

Section 4. The Vice-President shall discharge all the duties of the President in case of his absence or disability, and perform any specific duties required of him by the laws of the Endowment Rank. 372

Section 5. The Secretary shall receive all applications for membership made out in proper form and accompanied by the legal fees, and shall forward the same to the Medical Examiner-in-Chief for approval. Upon the return of said application, approved, he shall at once inform the applicant, and the obligation shall be administered. When said applicant shall have taken the obli-

gation as required by law, the Secretary shall certify the fact on the application and shall at once forward it, with the legal fees, to the Supreme Secretary. He shall keep a faithful record of the business of the Section transacted in the meeting or by the authorized officers during recess. The Secretary shall keep a financial account with each member of the Section.

He shall keep a record of, and send to the Supreme Secretary, the postoffice address of each member, and any change thereof, of which he has notice.

He shall use the books and blanks and receipts furnished by the Supreme Secretary, and perform all other duties required of him by the Constitution and Laws of the Endowment Rank.

For his services he shall receive such compensation as the Section may from time to time determine.

Before entering on the discharge of his duties he shall enter into and acknowledge a bond of the prescribed form in such penalty as the Section may determine, payable to the President of the Section, with sureties by him deemed sufficient, for the faithful discharge of his duties as Secretary.

Section 6. The Medical Examiner shall examine all applications for membership in the Endowment Rank, in accordance with the prescribed form, and "Rules for Medical Examiners."

Section 7. In case of death, resignation, or removal of any officer, the Section shall immediately fill the vacancy by an election, such officer to serve during the unexpired term.

ARTICLE V.

Beneficiaries, Lost Certificates, Etc.

Section 1. Each applicant for membership and each applicant for readmission in the Endowment Rank shall designate in his application some person, or persons, related to or dependent upon him as hereinafter stated, for

support, to whom the benefit shall be paid when due; and the name or names and the relationship of the person or persons so designated shall be inserted in the Endowment Certificate, except in case when the Endowment is made payable to "wife and children," the names of the children may be omitted, and in the event of such member's death, all surviving children of deceased shall be considered legal beneficiaries; Provided, that an applicant may name as beneficiary his betrothed, his Subordinate Lodge, his Endowment Rank Section or a Brother Knight. The interest of any person so designated, or their heirs, shall cease and determine in case of his or her death during the lifetime of such member. Upon the death of a member of this Rank, the benefit, as specified in the Endowment Certificate, shall be paid by the Supreme Secretary by order on the Supreme Master of Exchequer, through the Secretary of the Section to the person or persons designated in said certificate as entitled thereto. In case of the death of such person or persons after said benefit shall have accrued, the same shall be paid to the legal representatives of such person or persons. In case of the death of the person or persons designated as entitled to such benefit before the same shall have accrued, it shall be paid to the widow and children of the deceased member; and, if there be no widow nor children, nor any of them, it shall be paid to the father and mother, sisters and brothers, share and share alike; Provided, that the amount of said benefit shall be held sacred, a legacy to and for said legatees, and shall never, under any circumstances, be liable for, nor be appropriated to the payment of any debts against the estate of said deceased member. If none of the persons herein designated as entitled to said benefit, be alive when the same shall accrue, then, and in that case the said benefit shall be paid to the lawful heirs of the deceased member, and if there be no such heirs the

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libility of this Supreme Lodge, by reason of said certificate, shall cease and determine.

381 The beneficiary or beneficiaries on receipt of the order or orders on the Supreme Master of the Exchequer for the payment of the Endowment, shall receipt upon the back of the certificate of the deceased member, for the payment of said Endowment, which shall be attested by the Secretary of the Section, or in his absence by an officer duly authorized to take acknowledgements, and such certificate shall thereupon be surrendered and forwarded to the Supreme Secretary.

382 Section 2. Any member desiring to change his beneficiary or beneficiaries shall make application on the form provided by the Supreme Secretary; the Secretary of the Section shall attest the same and forward such application with the certificate originally issued and a fee of fifty (50) cents to the Supreme Secretary, who shall, if the change be in accordance with law, make the proper record and issue a new certificate, containing the name or names of the substituted beneficiary or beneficiaries.

383 Section 3. A member whose certificate has been lost, or destroyed by fire or other cause, shall be entitled to a duplicate, by making an affidavit, stating fully the facts connected therewith, which shall be forwarded by the Secretary of the Section, with a fee of fifty (50) cents to the Supreme Secretary, who, if the facts as set forth in the affidavit, justify it, shall issue a duplicate certificate.

384

ARTICLE VI.

Clearance Cards.

Section 1. Any member of this Rank desiring to transfer his membership to another Section, shall be entitled to receive a Clearance Card by paying all assessments and charges appearing against him on the books of the Section. The Clearance Card is furnished by the Supreme Secretary for twenty-five cents, and must be

countersigned by the President and Secretary of the Section, certifying to the good standing of the holder in the Endowment Rank. Said Card shall be in substance 385
as follows:

This is to certify that Brother
was duly admitted a member of Section No., of
the Endowment Rank, located at,
jurisdiction of, on the
day of, 18..., P. P., and holds Cer-
tificate No., Class, for \$....000.00.
He is assessed at the age of, one monthly assess- 386
ment being \$.....

He has paid assessments and other claims against him
to this date, and is under no charge whatever. On his
request this Clearance Card is granted, by which his
membership in this section is severed. Upon applica-
tion he shall be admitted into any Section of the Endow-
ment Rank within six months from the date hereof, and
no longer, upon his presenting evidence that he is a
member of a Subordinate Lodge Knights of Pythias in 387
good standing, and that he is not indebted for any as-
sessments, and not otherwise.

Section 2. A Clearance Card from a Section shall
be good for six months, the holder thereof shall pay his
dues and assessments to the Secretary of the Section
granting such Card until deposited in another Section.
If, at the end of six months, he has not deposited his
Card in his own or some other Section, his membership 388
in the Rank shall cease, and he shall forfeit all right,
title and interest in his Endowment Certificate. If he
desires subsequently to re-connect himself with the Rank,
he shall be treated in all respects as a new applicant, and
the forfeited certificate, in such cases, must accompany
the application when forwarded to the Supreme Secre-
tary.

- 389 Section 3. When a Clearance Card is deposited in a Section it must be accompanied by such fee as the Section may provide, and when a member is thus admitted to a Section, due notice thereof shall be sent to the Secretary of the Section granting such Card and to the Supreme Secretary.

ARTICLE VII.

Official Receipts for Assessments.

- 390 Section 1. All receipts for assessments paid to the Secretary of the Section by the members shall be furnished by the Supreme Secretary.

ARTICLE VIII.

Proof of Death.

- 391 Section 1. The proof of death shall in all cases be made by the beneficiary or beneficiaries on a blank form, to be furnished by the Supreme Secretary, and shall contain an affidavit of the attending physician and the undertaker who officiated, and also an affidavit of the Master of Finance, as to the standing of the deceased in the Lodge at the time of his death, and affidavits from such other persons as may be required; all affidavits to be made before an officer authorized to take affidavits, and such authority must be certified to by the Clerk of a Court of Record, or other competent authority, under seal.

- 392 All necessary legal papers required, in order to secure the proper payment of benefits, must also be furnished by the beneficiary or beneficiaries, and shall be forwarded with proof of death to the Supreme Secretary, by the Secretary of the Section.

ARTICLE IX.

Documents and Appeals.

- Section 1. All documents from Sections relating to the Endowment Rank requiring legislation by the Su-

preme Lodge, shall be forwarded, in duplicate under the seal of the Section from which such appeal emanates, 393 in time to reach the Supreme Keeper of Records and Seal, at least thirty days prior to the session of that body; a copy thereof shall at the same time be sent to the Supreme Secretary.

ARTICLE X.

Members in Arrears for Lodge Dues.

Section 1. When a member of the Endowment Rank becomes in arrears to his Lodge on account of dues for 394 more than six months, he shall forfeit his membership in the Section and said Rank, and render void his Endowment Certificate.

In case of such forfeiture he can again become a member of the Endowment Rank by making application in the form prescribed for new applicants, which must be accompanied by the forfeited certificate and the proper fees.

ARTICLE XI.

395

Section By-Laws.

Section 1. Each Section shall have the right to make by-laws for its own government, not inconsistent with these laws; and may provide such revenue as may be necessary to cover the expenses (if any) of its meetings, etc. Neglect or refusal to pay as required in such by-laws may subject the delinquent member to forfeiture of his membership in the Section and Rank and render void his Endowment Certificate; Provided, however, 396 that no Section shall pass a law requiring that such revenue for Section dues be paid by its members in advance.

In case of such forfeiture, he can again become a member of the Endowment Rank by making application in the manner prescribed for new applications, which must be accompanied by the forfeited certificate and the proper fees.

ARTICLE XII.

Amendments.

397

The provisions of these General Laws may be altered or amended at any regular session of the Supreme Lodge Knights of Pythias of the World by a two-thirds vote.

PLAINTIFF'S EXHIBIT "D."

398

IMPORTANT.

{ *The Only Pythian
Insurance.*

ENDOWMENT RANK

KNIGHTS OF PYTHIAS OF THE WORLD

(Established 1877.)

Incorporated by the Supreme Lodge.

399

The only beneficial Insurance Department of the Knights of Pythias.

The use of the name of the Order, in any manner whatever for life insurance purposes, by any member, person or corporation, is *Strictly Prohibited by the Supreme Lodge.*

SAFE.

RELIABLE,

PROMPT.

Membership over 32,500.

Insurance in force, \$71,000,000.

400

Certificates issued in amounts of \$1,000 to \$5,000.

EIGHT MILLION DOLLARS paid for death losses.

Reliable Insurance at LESS THAN HALF THE OLD LINE
COST.

THE ENDOWMENT RANK

Is under Supervision and Direction of a

401

BOARD OF CONTROL

Elected by the

SUPREME LODGE, KNIGHTS OF PYTHIAS OF THE WORLD.

It is the only beneficial insurance department of the Knights of Pythias.

Applicants may obtain an endowment of \$1,000, \$2,000, \$3,000, \$4,000, or \$5,000.

402

Beneficiaries may be either persons related to or dependent upon the member for support. A change of beneficiary, in accordance with law, may be made at any time and as often as desired.

A member is the absolute owner of his Certificate of Endowment, and controls its disposition as stated above.

Endowments are exempt from payment of debts of the member, being paid direct to the beneficiary, whose interests are protected by law.

403

The system of the Endowment Rank is based upon *actual cost of insurance* during expectancy of life, divided, for convenience, into fixed monthly payments during the life of the applicant in accordance with his age at date of applying for membership. These payments *do not increase* with increasing age, but always remain the same during good standing of the member.

To qualify an Applicant for admission to the Endowment Rank, he must not be over fifty (50) years of age, 404 a member in good standing of a Subordinate Lodge Knights of Pythias, and pass a satisfactory medical examination, which must be approved and accepted by the Board of Control.

The fees to be paid by applicants are as follows:

Medical Examiner's fee, which is usually from \$1.00 to \$2.00.

Medical Examiner-in-Chief's fee, 50 cents.

Membership fee per \$1,000 Endowment applied for,
\$1.00.

- 405 In the Organization of a Section the additional fee of \$5.00 for Warrant and Supplies (representing actual cost) is required.

The following table of Monthly Payments shows the cost under each age and amount of Endowment applied for:

TABLE OF MONTHLY ASSESSMENTS.

		\$1,000	\$2,000	\$3,000	\$4,000	\$5,000
406	AGE.	Amount	Amount	Amount	Amount	Amount
	21.....	\$.70	\$1.40	\$2.10	\$2.80	\$3.50
	22.....	.70	1.40	2.10	2.80	3.50
	23.....	.70	1.40	2.10	2.80	3.50
	24.....	.70	1.40	2.10	2.80	3.50
	25.....	.75	1.50	2.25	3.00	3.75
	26.....	.75	1.50	2.25	3.00	3.75
	27.....	.80	1.60	2.40	3.20	4.00
407	28.....	.80	1.60	2.40	3.20	4.00
	29.....	.80	1.60	2.40	3.20	4.00
	30.....	.80	1.60	2.40	3.20	4.00
	31.....	.85	1.70	2.55	3.40	4.25
	32.....	.90	1.80	2.70	3.60	4.50
	33.....	.90	1.80	2.70	3.60	4.50
	34.....	.95	1.90	2.85	3.80	4.75
	35.....	.95	1.90	2.85	3.80	4.75
	36.....	1.00	2.00	3.00	4.00	5.00
408	37.....	1.00	2.00	3.00	4.00	5.00
	38.....	1.05	2.10	3.15	4.20	5.25
	39.....	1.10	2.20	3.30	4.40	5.50
	40.....	1.10	2.20	3.30	4.40	5.50
	41.....	1.15	2.30	3.45	4.60	5.75
	42.....	1.20	2.40	3.60	4.80	6.00
	43.....	1.25	2.50	3.75	5.00	6.25
	44.....	1.30	2.60	3.90	5.20	6.50
	45.....	1.35	2.70	4.05	5.40	6.75

	\$1,000	\$2,000	\$3,000	\$4,000	\$5,000	
AGE.	Amount	Amount	Amount	Amount	Amount	
46.....	1.40	2.80	4.20	5.60	7.00	409
47.....	1.45	2.90	4.35	5.80	7.25	
48.....	1.50	3.00	4.50	6.00	7.50	
49.....	1.55	3.10	4.65	6.20	7.75	
50.....	1.60	3.20	4.80	6.40	8.00	
	=====	=====	=====	=====	=====	

All members of the Order under 50 years of age, who *can* pass a satisfactory medical examination, should become members of the Endowment Rank. 410

Death, disease and accident do not await our convenience in making provision for our families — the strong man of to-day may be the invalid of to-morrow.

Every Knight of Pythias should work to increase the Rank. It is a branch of the Order worthy of the highest confidence and pays all legitimate claims in full, immediately upon receipt of proof of death.

The growth of the Rank during the past four years has been marvelous, the membership and the insurance 411 in force having nearly doubled.

No subordinate Lodge should be without this valuable adjunct. Its features combine all the elements of cheapness, reliability and permanence.

In fraternal life insurance nothing better can be offered.

If there is no Section in your city or town, or among the membership of your Subordinate Lodge, write at once for the necessary preliminary blank forms and full 412 instructions for organization.

Any member of the Order in good standing is eligible to undertake this work.

The Board of Control has authority to address Grand and Subordinate Lodges, and to circulate therein any communication, by circular or otherwise, appertaining

to or connected with the Endowment Rank, or its business.

- 413 Address all communications, remittances, etc.:

BOARD OF CONTROL,
Endowment Rank, Knights of Pythias,
Rooms 43 to 49, Commerce Building,
Chicago, Ill.

PLAINTIFF'S EXHIBIT "E."

- 414 Form 24.

INFORMATION AND INSTRUCTIONS
For Secretaries of Sections,
SUPREME LODGE
KNIGHTS OF PYTHIAS,
ENDOWMENT RANK,
The Insurance Branch of this Order.

- 415 CHICAGO, July 15, 1901.

To Secretaries of Sections:

GENERAL INFORMATION AND INSTRUCTIONS.

- It is of the greatest importance that the Secretary thoroughly familiarize himself with the law and the requirements of official duties, in order that the transactions between the membership and the Section, and with this office, may be performed correctly and with promptness and dispatch.
- 416

A careful compliance will relieve you of much unnecessary labor and result in greatly facilitating the business in the office of the Board of Control.

Retain this circular carefully; refer to it in connection with the General Laws, Rules and Regulations when

information is desired. It will save much correspondence.

Fraternally,

417

S. M. SMITH,

Secretary Board of Control.

Fisher Building,

Dearborn and Van Buren Sts.

CONSTITUTION AND GENERAL LAWS, RULES AND REGULATIONS.

The Constitution and General Laws, Rules and Regulations promulgated by the Board of Control, November 6, 1900, and amendments thereto, are in full force and effect. 418

Certificates are issued in the sums of \$500, \$1,000, \$2,000 and \$3,000.

BOARD OF CONTROL.

1. The Board of Control holds regular quarterly meetings at its office, Fisher Building, Chicago, in the months of January, April, July and October of each year. 419

OFFICE OF MEDICAL EXAMINER-IN-CHIEF.

1. The office of Medical Examiner-in-Chief is attached to the office of the Board of Control. Applications are acted upon by that office the same day they are received at the office of the Board.

His fee is paid by the Board of Control.

420

MEDICAL EXAMINERS OF SECTIONS.

1. Medical Examiners of Sections must be appointed by the Board of Control. See Article IX, Section —, General Laws, Rules and Regulations. Blank applications for appointment as Section Medical Examiners are furnished by the Board of Control. Medical Examiners are paid by the Board of Control in accordance with the provisions of Article X, Section 5, General

421 Laws, Rules and Regulations. Under no circumstances are the Secretaries to pay the same, but bills are to be forwarded to the Home Office by the Examiners, and, if correct, will be paid on the 1st and 15th of each month.

OFFICIAL BLANKS.

All blanks and books required, with the exception of clearance cards, are furnished to Sections free of charge.

APPLICATION FOR MEMBERSHIP.

422 1. Applications for membership must be fully and carefully filled out by the applicant and Medical Examiner. The Secretary should attest applicant's signature, state the number of Section and his postoffice address.

2. Applicants must pay the membership fee of \$1.00 on each \$1,000 of Endowment applied for.

3. Applicants for an Endowment of \$500 must pay a membership fee of 50 cents.

423 4. When the application has been completed in all details the Medical Examiner returns it to the Secretary of the Section, who forwards it, accompanied by the *first monthly payment, based upon the applicant's age at nearest birthday to date of application, direct to the Board of Control.* If accepted by the Board, Certificate of Membership will be at once issued.

TABLE OF MONTHLY PAYMENTS.

424		\$500	\$1,000	\$2,000	\$3,000
	AGE.	Amount	Amount	Amount	Amount
	21.....	\$.45	\$.90	\$1.80	\$2.70
	22.....	.50	.95	1.90	2.85
	23.....	.50	1.00	2.00	3.00
	24.....	.50	1.00	2.00	3.00
	25.....	.55	1.05	2.10	3.15
	26.....	.55	1.10	2.20	3.30
	27.....	.55	1.10	2.20	3.30

AGE.	\$500 Amount	\$1,000 Amount	\$2,000 Amount	\$3,000 Amount	
28.....	.60	1.15	2.30	3.45	425
29.....	.60	1.20	2.40	3.60	
30.....	.65	1.25	2.50	3.75	
31.....	.65	1.25	2.50	3.75	
32.....	.65	1.30	2.60	3.90	
33.....	.70	1.35	2.70	4.05	
34.....	.70	1.40	2.80	4.20	
35.....	.75	1.45	2.90	4.35	
36.....	.75	1.50	3.00	4.50	
37.....	.80	1.60	3.20	4.80	426
38.....	.85	1.65	3.30	4.95	
39.....	.85	1.70	3.40	5.10	
40.....	.90	1.75	3.50	5.25	
41.....	.90	1.85	3.70	5.55	
42.....	.95	1.90	3.80	5.70	
43.....	1.00	2.00	4.00	6.00	
44.....	1.05	2.10	4.20	6.30	
45.....	1.10	2.15	4.30	6.45	
46.....	1.15	2.25	4.50	6.75	427
47.....	1.20	2.35	4.70	7.05	
48.....	1.25	2.45	4.90	7.35	
49.....	1.30	2.60	5.20	7.80	
50.....	1.35	2.70	5.40	8.10	

The following proviso was added by the Supreme Lodge at the time of the adoption of the above table of rates:

428

" Provided that at any time when in the judgment of the Board of Control the condition of the finances of the Endowment Rank will permit, the Board of Control is authorized and directed to suspend the collection of monthly payments."

HAZARDOUS AND EXTRA HAZARDOUS GRADES.

- 429 The following occupations shall be deemed *hazardous*: Brakemen on passenger trains. Conductors on passenger trains. Color makers. Constables. Employes on railroad or elevated passenger trains. Electric light trimmers. Firemen — city fire department. Grinders and Polishers. Jailer. Locomotive Engineers and firemen. Lighthouse keepers — not on shore. Miners — not working underground. Metal polishers. Motormen on electric cars. Marshals and their deputies, if vested with police power. Oil and gas drillers and oil and gas pumpers. Pilots. Policemen. Prison guards. Quarrymen. Saw filers. Steamers— employes thereon. Sheriffs and their deputies, except if employed in office only. Stonecutters. Watchmen— vested with police power. Waiters — in places where liquors are sold. White Lead Factory employes. Wood workers — operating lathe, planer, moulding and other machines. Yardmasters.
- 430

- 431 Applicants for membership engaged in hazardous occupations shall be limited to an endowment of \$2,000 and a monthly payment of 25 cents for each \$1,000 in addition to the amount required by the table of rates will be charged.

Applicants engaged in hazardous occupations who apply for an endowment of \$500 must pay 15 cents per month in addition to the amount required by the table of rates.

- 432 The following occupations shall be deemed *extra hazardous*: Bartenders. Boatmen at sea in row or sailing boats. Brakemen on freight trains. Conductors on freight trains. Cotton press or gin operators and cotton warehouse employes. Car inspectors and car repairers. Divers. Explosives — persons employed in the manufacture of or regularly engaged in handling same. Fishermen — those going to sea in row and sailing boats. Glassblowers of every descrip-

tion. Life saving crews. Linemen — handling telegraph, telephone, electric light and street car wires. Liquor dealers — retail. Match makers. Miners and employees in mines working underground. Millers — flour. Performers — circus and trapeze. Sailing vessels — employees thereon. Saloonkeepers. Sawyers, gang, buzz, band and circular. Seal hunters. Switchmen — except tower-men. 433

Applicants for membership engaged in any of the above occupations shall be limited to an endowment of \$1,000 and a monthly payment of 40 cents in addition to the amounts required by the table of rates will be charged. 434

Applicants engaged in extra hazardous occupations who apply for an endowment of \$500, must pay 20 cents per month in addition to the amounts required by the table of rates.

CHANGE OF OCCUPATION.

If any member heretofore admitted into the Endowment Rank shall, after the first day of March, 1894, or if any member since admitted shall, after the date of his application, change his occupation from that of one grade to one for which a higher rate is payable, *he shall, within thirty days from time of making such change, give written notice to the Secretary of the Board of Control, through the Secretary of the Section,* stating such change, and the new occupation engaged in and thereupon the monthly payments of such member shall be increased accordingly, and in like manner, upon notice as aforesaid, the monthly payments shall be decreased where any such member, paying the higher rates hereinbefore specified, shall change to an occupation of a grade for which a lower payment is required, provided the Board of Control shall be satisfied that the health of such member has not become impaired by reason of such previous occupation. 436

Such increase or decrease of monthly payments herein provided for shall begin with the month next
 437 following such change of occupation, provided, however, that where any member admitted to the Endowment Rank on or after the first day of March, 1894, shall change his occupation to that of one in either the extra hazardous or hazardous grades, his endowment shall be reduced so as not to exceed the limit provided for such grade, and his monthly payments shall be adjusted accordingly.

If any such member shall fail to give notice, as
 438 hereinbefore stated, within thirty days after such change, such failure shall forthwith cause a forfeiture of the certificate held by such member, and his membership and all rights in the Endowment Rank shall cease.

MONTHLY PAYMENTS.

1. Monthly payments are payable on the first day of each month to the Secretary of the Section. If not
 439 paid on or before the 10th day of each month the member delinquent forfeits his certificate and membership, which must be reported by the Secretary upon the official remittance blank (in accordance with instructions thereon), when the amount due from the Section for that month is forwarded to the Board of Control. Remittances must be made in full (*without deduction for exchange, commissions or other charges*).

Secretaries are requested to forward remittances by
 440 Post Office money order, Express money order, Express prepaid, or by bank draft on Chicago or New York, drafts to be made payable to the Secretary of the Section and endorsed by him officially, payable to Board of Control, Endowment Rank, K. of P.

If remittance is made by bank draft it is understood that the credit given the Section on day of its receipt is subject to the payment of the draft by the bank upon which it is drawn.

Under no circumstances will individual checks be received. The remittance will be returned if made in that manner. 441

2. Monthly payments must reach the office of the Board of Control on or before the last day of each month.

FORFEITURE OF MEMBERSHIP.

1. A member who fails to pay monthly payments or assessments, as provided for in the General Laws, Rules and Regulations, forfeits his certificate and membership absolutely, and cannot again become a 442 member unless he complies with all the rules governing the admission of new members except as provided in Article IV, Section 8, General Laws, Rules and Regulations.

2. Action of the Section is not necessary to declare the forfeiture of a certificate and membership of a delinquent member. Failure to make payment within the time specified by law *creates of itself the forfeiture.* 443

INCREASE OF ENDOWMENT.

1. Members in good standing not over fifty years of age, except those already holding the maximum, or those holding the maximum by reason of hazardous occupation, may increase the amount of their endowment, as provided for under Article VII, Section 1, General Laws, Rules and Regulations, by making application, upon a *special form*, to the Section in which membership is held, in the same manner and form as is 444 provided for the admission of new applicants, and paying the membership fee of one dollar on each one thousand dollars additional endowment applied for. A member holding Certificate for \$500 may apply for additional endowment; if engaged in Extra Hazardous occupation, application for an increase to \$1,000 is permissible, if engaged in Hazardous occupation, application for \$1,500 additional is permissible.

2. When the application for increase has been completed in all details the Secretary forwards it direct to the Board of Control, together with the certificate held by the member. The first monthly payment for the additional endowment, the amount of which is based upon *present age* at nearest birthday to date of making application, must in every instance accompany the papers. If accepted, a new certificate for the entire amount of endowment will be issued.

3. The monthly payment required by reason of the increase of endowment must be added to the amount payable under the former certificate, thus fixing the total monthly payment to be paid each month thereafter.

4. The cost of Medical Examination is paid by the Board of Control.

5. If change of beneficiary under the old certificate is desired, be careful to specifically state the same in making the application for increase.

6. The special blank must in all cases be used.

DECREASE OF ENDOWMENT.

1. A member may decrease his endowment, as provided for under Article VII, Section 2, General Laws, Rules and Regulations, by making application to the Secretary of the Section of which he is a member, upon a blank provided by the Board of Control.

2. The Secretary must forward such application, and the required fee of 50 cents, to the Board of Control, accompanied by the certificate held by the member.

3. The deduction in the monthly payment is made for the month *succeeding* the one in which the application for decrease is made.

LOST CERTIFICATES.

When a certificate is lost or destroyed, a duplicate can be obtained by the member making satisfactory affi-

davit of the facts connected with the loss, accompanied with a full release of all his right, title and interest in and to the original certificate, and requesting the issue of a duplicate. Such affidavit must be sent to the Board of Control by the Secretary of the Section, accompanied by a fee of 50 cents. 449

BENEFICIARIES.

1. The application must state distinctly the name or names in full and the relationship of the beneficiary or beneficiaries.

2. Under the laws of the Endowment Rank (Article VI, Section 1, General Laws, Rules and Regulations), a certificate can be made payable only to some person or persons related to or dependent upon the applicant for support. 450

3. When the endowment is made payable to "wife and children," the name of the wife must be given, but the names of the children may be omitted by stating "*to my surviving children.*" Otherwise the names of the children should be given. 451

Note.—Such terms as "Trustee," "Heirs," "Executors," "Administrators," "Estate," "Myself," "Legal representatives," "as directed by will," etc., *must not be used.*

CHANGE OF BENEFICIARY.

Change of beneficiary can be made at any time and as often as desired in accordance with law (Article VII, Section 5, General Laws, Rules and Regulations), by making application upon the form provided, surrendering the original certificate and paying a fee of 50 cents, all of which must be sent to the Board of Control. 452

In case a member desiring to change his beneficiary shall be unable to surrender the original certificate, or the certificate then in force, by reason of the act of refusal of the beneficiary named therein, or from any

other cause, the Board of Control may issue a new certificate upon proof of the facts by affidavit of the member, and the execution by him of such instruments of release or indemnity as shall be deemed necessary.

CLEARANCE CARDS.

1. A member taking a clearance card must not be reported to the Board of Control as withdrawn, on the remittance blank or in any other manner, until the Secretary has been officially notified that the Brother has deposited his card in another Section. Until then he must be treated as a member of the Section, and if he fails to pay monthly payments, assessments or dues, he forfeits his membership and certificate, and *must* be so reported on the official *remittance blank*.

2. When a Clearance Card is deposited in a Section the Secretary should at once officially notify the Secretary of the Section in which membership was formerly held, giving the date of such admission. The member depositing the Card should be required to produce his receipt for the last payment made. The Secretary must then report such admission *to the Board of Control on the regular remittance blank only*, as thereon provided, for the month succeeding the one in which payment was made to the former Secretary.

3. Clearance Cards can be obtained by Secretaries of Sections from the Board of Control only, by forwarding 25 cents for each Card ordered. The *cash must in all cases accompany the order*.

4. Clearance Cards are good only for twelve months from the date issued, and if not deposited in some Section within that time, membership shall continue in the Section granting the card, and such Clearance Card becomes null and void. See Article VIII, Sections 1 to 4, Geeneral Laws, Rules and Regulations.

PROOF OF DEATH.

1. Immediately upon learning of the death of a member of your Section in good standing, notify the Board of Control, using the blank death notice furnished you for that purpose. Upon receipt of such notice the Secretary of the Board will forward a blank form for certificate of the beneficiary or beneficiaries, the Master of Finance of the Subordinate Lodge and officers of the Section. 457

2. This blank should be filled up carefully, in accordance with instructions thereon, and returned to the Board of Control without delay. 458

3. If the several certificates contained in proof form No. 1 have been properly executed, the Secretary of the Board will forward a form for certificate of physician and undertaker or sexton, which should also be promptly completed and returned to the Board of Control.

4. If death results from violence or from other than natural causes, and a coroner's inquest is held, a copy of the proceedings of such inquest, duly certified by proper authority, must be furnished, in addition to the affidavit of the attending physician, or instead thereof, if no physician attended deceased. 459

5. When the endowment, or a part of it, is payable to the children or surviving children (no names having been stated in the application or certificate), the widow, guardian or other parties at interest must furnish an affidavit, giving the names in full and ages of all children. It should be specifically stated in such affidavit that those named are the only surviving children of , deceased. Letters of guardianship or power of attorney, whenever necessary, should follow as early as possible. 460

6. All expenses incurred in furnishing proofs, official documents, etc., for a proper and satisfactory ad-

justment of death claims must be paid by the beneficiaries.

- 461 *Care should be taken that all questions are fully and completely answered.*

MEETINGS OF SECTIONS.

1. Meetings for the transaction of official Section business shall be held at such time and place as may be fixed by the by-laws.

2. A meeting shall also be held in December of each year for the election of a President, Vice-President and Secretary, who shall constitute the officers of the Section for the ensuing year. *The Medical Examiner of the Section, if duly appointed, continues to serve, subject to the orders of the Board of Control.*

3. Special meetings, when necessary, may be held upon the call of the President or at the request of two members of the Section.

OFFICERS.

- 463 1. Article X of the General Laws, Rules and Regulations of the Endowment Rank specifies the duties of Section Officers.

2. Secretaries must report to the Board of Control the names and addresses of the Section officers, and any change that may occur by reason of death, resignation or removal.

SECTION BY-LAWS.

- 464 1. Each Section is authorized to make by-laws for its own government not inconsistent with the Constitution and General Laws, Rules and Regulations of the Endowment Rank, such by-laws to be approved by the President of the Board of Control. *Sections have no power to collect any tax or charge whatever from the membership. Secretaries of Sections are paid for their services directly by the Board of Control.*

Members in Arrears for Lodge Dues.

When a member of the Rank becomes in arrears to his lodge for an amount equal to one year's dues, he shall forfeit his membership in the Section and Rank, and said forfeiture shall render void his endowment certificate. 465

Defunct Lodges—Grand Lodge Cards and Withdrawal Cards.

1. Members of lodges becoming defunct, in order to retain membership in the Endowment Rank, must at once obtain a Grand Lodge card from the proper officers of their Grand Domain, report the fact to the Secretary of the Section, who shall, without delay, inform the Board of Control, giving the date of the issue of the card. A failure to deposit such card, or a withdrawal card, in a Subordinate Lodge *within twelve months from the date of issue* forfeits membership and all right, title and interest in and to the certificate of endowment. 466

2. In case of forfeiture from any cause (except as provided in Article IV, Section 8, General Laws, Rules and Regulations), application for re-admission must be in the same form prescribed for new applicants, and the forfeited certificate must accompany the application when forwarded to the Board of Control for action. 467

REMITTANCE BLANK.

Careful attention of Secretaries is called to the *Remittance Blank*, which must *always* be used in forwarding the monthly payments to the Board of Control. 468

The instructions on this blank explain its use thoroughly; before remitting, care should be taken that every detail as required should be complied with.

All additions and deductions in the membership should be reported on this blank only, and for the proper month in which the member begins or ceases to pay; the character of the admission and the cause of deduction must *always* be clearly stated. In reporting a member

as forfeited by reason of suspension from Subordinate Lodge, the cause of such suspension should be fully stated; if for any other reason than non-payment of dues or other finance items, a certificate from the Keeper of Records and Seal, stating briefly the facts, date, etc., should be obtained and accompany the Remittance Blank showing deduction.

If a Brother so suspended appeals from the action of the Subordinate Lodge to higher authority, the Secretary should at once report such fact to the Board of Control.

470 Information or instruction on all matters not specifically mentioned herein will be cheerfully and promptly given.

Always address,

BOARD OF CONTROL,
Endowment Rank, Knights of Pythias,
Fisher Building, Dearborn and Van Buren Streets,
Chicago, Ill.

471

PLAINTIFF'S EXHIBIT "F."

ELECTIONS OPEN TO MEMBERS OF THE FOURTH CLASS
OF THE INSURANCE DEPARTMENT.

SUPREME LODGE KNIGHTS OF PYTHIAS.

Name A. V. H. Smyth. Certificate No. 23868.
Section No. 279.

472 Amount of Certificate \$3,000. Amount of Present
Monthly Payment \$4.80.

Born 12-27, 1852. Age at nearest birthday January 1,
1911, 58 years.

Indianapolis, Ind., 10-13, 1910.

Dear Sir and Brother:—

The Supreme Lodge, Knights of Pythias, in regular Convention assembled, on the 10th day of August, A. D.

1910, by Section 468, Supreme Statutes, relating to the Insurance Department, enacted and provided that:

1. (Paragraphs "B" and "C.") Every member of 473
the Fourth Class on January 1, A. D. 1911, shall be
rerated according to his attained age and occupation
and amount of benefit provided for in his certificate,
in accordance with the table of rates therein provided,
and his monthly rates thereafter to be as provided for
by said table, unless the member shall elect to take
some one of the options provided for in said Section
468. If you do not elect to take one of the options 474
and desire to continue the amount of your present
certificate for the remainder of your life, then, begin-
ning with the month of January, 1911, and for each
month thereafter, your monthly payment will be
\$14.70. If you accept one of the following options,
the above paragraph will not apply to you.

The options are as follows:

2. (Paragraph "D.") You may surrender your 475
present certificate and accept a certificate in lieu
thereof and for the amount thereof, which will insure
you for a term of five (5) years for the monthly pay-
ment of \$7.95, or for the term of ten (10) years for
the same amount for the monthly payment of \$9.30.
At the end of the five (5) or ten (10) year period,
whichever you elect to accept, the certificate will ter-
minate, and you will no longer be insured under it. If
you should die while the certificate is in force and
before its termination, the amount thereof will be 476
paid your beneficiary.

3. (Paragraph "E.") Or you may elect to con-
tinue making the same payment which you now pay
each month, to-wit: \$, from and after January
1, 1911, and upon surrendering your present certifi-
cate, a new one will be issued to you for the amount
of the old certificate, but it will terminate on the
. . . . day of, A. D. 19 ; your

477 present rate being sufficient to give you life insurance protection until said date, but no longer. If you die within that time, the amount of the certificate, if in force, will be paid to your beneficiary, but it will expire on that date, and you will no longer be insured under it.

478 4. (Paragraph "F.") Or if you so elect, you may have your present certificate scaled down to such a sum as the rates that you are now paying will provide insurance for the whole period of your life, regardless of when your death occurs, and your rate under this Plan will be just what it is now, that is \$4.80 per each month, but the amount of your certificate will be \$978.00, instead of its present amount, and if kept in force until your death, regardless of when death occurs, the amount thereof will be paid your beneficiary.

479 5. (Paragraph "G.") Or if you elect to retain the present certificate that you have and are unwilling to accept any of the other options, you may have a lien placed against your certificate, the amount of such lien to be deducted at the maturity of the certificate, whenever the same matures by your death, and you may continue to pay the same rate that you are now paying, to-wit: \$4.80 per each month. Under this option the lien will be \$2,022.00, and will be deducted from the face of your certificate at maturity, leaving the balance of \$978.00 to be paid to your beneficiary.

480 6. (Paragraph "H.") Or you may elect to continue the full amount of your insurance protection for the whole period of your life, and to be rerated as of your age at nearest birthday January 1, 1911, and if you are unable to make the payment of \$14.70 that will be due from you under said certificate as each monthly payment from and after January 1, 1911, and will satisfy the Board that you are unable to pay

the whole of said monthly payment in cash, then you may pay in cash the sum of \$7.95 for each month, and the sum of \$6.75 for each month will be charged 481 against your certificate, together with 5 per centum per annum as interest, which said sums not so paid by you with the interest, whatever they aggregate at the time of the maturity of your certificate, will be deducted from the face amount thereof. You may, if you choose, relieve your certificate of this lien, or any portion thereof, at any time, by paying the amount of same, or any portion thereof.

7. Or you may, if you choose, transfer the whole 482 or any portion of your insurance from the Fourth to the Fifth Class, such transfer to be made without expense to you and without medical examination, but in the event of such transfer you will be rerated at your attained age and in accordance with the plan in said Fifth Class to which you elect to transfer.

You are required by said enactments of the Supreme Lodge to elect in writing on or before the first day of 483 January, 1911, which of the options you will avail yourself of, and in the event you fail to make such election, your rates on January 1, 1911, will be automatically raised, as is stated in the first paragraph hereof, to the sum of \$14.70, which sum will be due from you for each month thereafter, beginning with the month of January, 1911.

If you desire any further information with respect to any of these options, it will be cheerfully furnished you. 484

The sole purpose of the Supreme Lodge in taking the action noted above was to provide sufficient funds, so that every and the last certificate may be paid at maturity, and that each member may bear his just and equitable portion of the cost of raising the requisite funds for such purposes.

From and after January 1, 1911, every certificate in the Fourth Class will be annually valued the same as

485 certificates in the Fifth Class, and the surplus that may be accumulated will be distributed in the same way as it is done in the Fifth Class, by the waiving of assessments, and all Fourth Class certificates, after they have been in force for three years after January 1, 1911, will be incontestable for suicide, the same as are the certificates in the Fifth Class.

Please sign one of the elections herewith enclosed, all blanks of which have been filled out, and return it to the Board of Control at once. Do not sign more than one election.

486

Fraternally submitted,

BOARD OF CONTROL,

By UNION B. HUNT,

President Insurance Department.

Issued in triplicate, one original copy placed on file in office of Board, one original copy mailed to member at his last known address on 13 day of October, 1910, one original copy mailed to Superintendent.

487

The smaller papers attached to Exhibit "F" and marked "C," "S," "E," "F," "G" and "H," were blanks upon which plaintiff could signify his intention of accepting the options mentioned in Exhibit "F," and are omitted.

PLAINTIFF'S EXHIBIT "G."

THE KNIGHTS OF PYTHIAS NEWS.

489

INSURANCE DEPARTMENT.

F C VOL. VIII. OCTOBER, 1910.

No. 10.

B

AT THE SET OF THE SUN.

At the set of the sun,	490
When our work is done,	
With all its tangled web,	
When the clouds drift low,	
And the stream runs slow,	
And life is at its ebb.	
As we near the goal,	
When the golden bowl,	
.....	
.....ought,	491
Shall the hour be fraught,	
What precious most shall we count?	
Not the flame of the sword,	
Nor the wealth we have stored,	
In perishable things of earth —	
Not the way we have trod	
With the intellect broad,	
Though that were of precious worth.	492
Nor the gain we achieved,	
Through the hearts we have grieved,	
And left unhelped by the way,	
Nor the laurel of fame,	
When, for worldly acclaim,	
We toiled in the heat and the fray.	

- Ah, no! 'tis not these
 Will give our hearts ease,
 493 When life sinks low in the west;
 But the passing sweet thought
 Of the good we have wrought,
 The saddened lives we have blest.
 And the love we have won,
 And the love beckoning on
 From His islands far and dim;
 Love out of the light,
 494 Shining into the night,
 The night which leadeth to him.

—Selected.

KNIGHTS OF PYTHIAS INSURANCE DEPARTMENT NEWS.

Strong Endorsement of the Insurance Department.

- The Grand Lodge of New Mexico met at Albuquerque October 4th, and the Insurance Committee, of which
 495 Past Supreme Representative B. F. Adams was chairman, made a strong report endorsing the Insurance Department, which report was adopted by the Grand Lodge.

- The Committee, among other good things, said:
 "The management of this rank (Insurance Department) involves one hundred and ten million dollars, affecting seventy-four thousand members of the Order. Of this insurance we are glad to say that only about twenty-two
 496 millions of dollars are in the Fourth Class with a membership of eleven thousand, six hundred and forty-four.
 * * * We regret that all members of the Fourth Class did not see fit to transfer to the Fifth Class.

The volume and nature of the business demands in the management men not only having the interests of the Department and the Order at heart, but men whose financial training and ability are such as will enable them not only to understand and cope with the prob-

lems involved in life insurance, but also in the management and investment of the funds belonging to the Insurance Department.

497

Without mentioning particular members, we say to the Order that if our members will take a list of the names of the present Board of Control, and after ascertaining who compose the Board will investigate the business ability and standing of the several members of the Board of Control, such investigation will warrant renewed confidence in the present management, because each and every member will be found to be a man prominent in the professional, business and commercial life of his community.

498

As to the present investment of the funds of the Insurance Department, it is stated by Insurance Commissioners that the list of securities are of the very highest character and is equal if not superior to securities held by any other insurance company.

The inadequacy of the rates charged for insurance in the Fourth Class is the cause of the present condition of that class. Establishing this insurance without charging adequate rates was an error in judgment; it was an error for which each and every member of the Order is as much responsible as any other member, because the rates should have been raised years ago. The Endowment Rank, however, is no exception and every Order granting fraternal insurance, and granting insurance without charging adequate rates, has been forced to go out of business or charge adequate rates for the insurance given.

499

500

Insurance policies must be paid from the money received from premiums. You cannot pay the money due on an insurance policy by passing glittering resolutions.

The Supreme Lodge Knights of Pythias led the way in reforming the plan of Fraternal Insurance. At New

Orleans in 1906 our Supreme Lodge not only revised the rates but established a new department to be known
 501 as the Insurance Department, and now issue insurance giving our members the choice of four plans of life insurance, each of which is based upon adequate rates.

These different plans or policies of insurance now issued by the Fifth Class certainly give to any man an option which will be satisfactory to him. We recommend that every member of the Order desiring life insurance, before taking insurance, investigate and consider the different plans of insurance offered by the
 502 present Fifth Class.

It is true that our Insurance Department charges higher rates than most fraternal insurance orders, but our rates are as low as sound and safe insurance can be sold. Insurance sold at a lower rate will ultimately be in the same condition as the present Fourth Class.

The report of the Insurance Committee at Milwaukee in 1910 states fully the condition both of the Fourth and Fifth classes. The report of the insurance committee and the action of the Supreme Lodge thereon
 503 ought to be commended. As each Lodge will have a copy of the Supreme Lodge Journal, we recommend that at some convention of the Lodge the reports of the officers of the Insurance Department and of the committee on insurance be read and discussed because we think that our members should be familiar with the information therein contained.

504 We believe the best and only solution of the problem confronting the Fourth Class insurance was that taken by the Supreme Lodge at Milwaukee and we endorse the action of the Supreme Lodge in giving to members of the Fourth Class the choice of several options for the equitable readjustment of their insurance. We recommend that every person now holding insurance in the Fourth Class consider these options and select that one which he believes to be the best and most favorable for

himself and that he immediately accept the option he believes to be the best and most favorable for himself.

We commend the present Board of Control; we believe that their management is careful, conservative and as economical as business methods demand. To one and all we wish to say that every business man knows there is a true and a false economy. True economy demands business methods and conservatism; false, niggardly economy is apt to produce loss of business and at times loss of funds. 505

We believe that the present Board of Control are using the very best methods possible. They are men, as we have said, fully qualified to manage the Department and we believe they are managing it in the interests of the Order. 506

When you discuss, or we discuss, the Insurance Department of the Order Knights of Pythias, or as some may still call it the Endowment Rank, we ask you to please remember that the insurance now issued by the Insurance Department is based on adequate rates and is issued on entirely different plans and at entirely different rates and is under an entirely different management from the old Endowment Rank fourth-class insurance. We think that if our membership will once for all get in their minds this difference they will be more capable of discussing the insurance now being issued by the Insurance Department and fraternal insurance generally. 507

The present rates charged for Fifth Class insurance are of course cheaper than old line insurance, but they are based on the tables of mortality and the death rates just as are the premiums charged by old line companies. The only difference and saving in favor of the rates charged by our Insurance Department is due to the fact that our Insurance Department is more economically managed than old line companies. 508

- 509 We commend the action of any insurance commissioner who refuses to permit any insurance company or fraternal order to write insurance within his jurisdiction except such company as charges adequate rates for the insurance written. We endorse all legislation requiring adequate rates for life insurance. It is a protection to the people because their insurance is safe and sound."

A SAD WARNING.

Oct. 1st, 1910.

- 510 *Board of Control, Insurance Department, K. of P., Indianapolis, Indiana:*

GENTLEMEN.— I am administrator of the estate of John, who died September 10th, 1910, and find among his papers Certificate No., for \$2,000, payable to his wife, Mary, and I would like to know what steps are necessary to take to get this money.

- 511 Awaiting your reply, I am,
Very truly yours,

.....

Administrator.

The reply to this letter is as follows:

INDIANAPOLIS, Oct. 3rd, 1910.

- 512 DEAR SIR.— We are in receipt of your letter of the 1st inst. inquiring about Certificate No. for \$2,000 held by the late John, and in reply will say, the certificate in question was forfeited in April, 1909, and there is, therefore, no liability under said certificate.

Trusting this will give you all of the information you desire, I am,

Very truly yours,

W. A. JENKINS.

General Secretary.

The above is a sample of correspondence carried on with this office almost weekly. Only last week we received just such a letter, and on looking up the letter found that after sending a second letter to the Brother asking him to pay the amount due for April, he answered that he had informed the Secretary of his Section that he no longer desired to carry the insurance. 513

He was a young man, no doubt at that time in good health, and death seemed a long way off, but what a mistake he made.

He had only carried this insurance about two years, and if he had paid in a few more dollars, he would have left his loved ones an estate of \$2,000 in cash, instead of the disappointment that must have been theirs when the administrator informed them of the answer to his letter. 514

Brother, consider well the result of your act before you deprive those dependent upon you of the protection they have a right to expect at your hands.

Leave them a certificate in full force, worth one hundred cents for every dollar written on the face thereof, rather than the despair and disappointment that will be theirs when you are gone and they find out that the husband and father has been neglectful of their interest, and has allowed his insurance to lapse. 515

GRAND LODGE OF VERMONT.

Supreme Chancellor Hanson has furnished us with a copy of a letter written to him by Supreme Representative Cowles, of Vermont, which gives an excellent account of the meeting of the twenty-second Grand Lodge of the Grand Domain of Vermont. The Supreme Chancellor is very much pleased with Brother Cowles' action in this matter and will appreciate it if other Supreme Representatives and Grand Lodge officers will keep him advised of conditions in their 516

Grand Domain. The letter of Brother Cowles is in part as follows:

517

"BURLINGTON, VT., Sept. 5, 1910.

HON. GEO. M. HANSON, S. C., *Calais, Me.*:

DEAR BROTHER HANSON.—It occurred to me that as long as Vermont is the first Domain to hold a Grand Lodge under your administration, you would be pleased to receive a line giving you an outline of what they have done.

518

Our Twenty-second Annual Convention of the Grand Lodge was held at Rutland, August 30th and 31st, and the Fifth Annual Encampment of the Uniform Rank was at Lake Bomoseen, a beautiful summer resort, fourteen miles from Rutland by Electric road. The boys went into camp August 27th and broke camp Wednesday, August 31st. About one hundred and twenty-five men were there most of the time and the Company from Keene, N. H., about forty strong, came up Monday and were with the boys in camp and took part in

519

the parade Tuesday. Col. Willey tells me that this was the most successful in all respects of any camp ever held in this State. The Grand Lodge convened Tuesday at 10 A. M., but adjourned for the afternoon to permit its members to take part in and view the parade. They re-convened Wednesday morning and finished their business about 5 o'clock in the afternoon. Twenty-five Past Chancellors were given their Grand Lodge Rank. There was nothing very unusual in this

520

year's session. Indeed, it seemed to be a love-feast from beginning to end.

I think there was only one officer elected by a ballot of the whole lodge, the rest of the elections being declared by one ballot, having been cast by the Keeper of Records and Seal or Grand Master at Arms.

We were pleased to have with us Grand Chancellor Jacobs, of Connecticut, and Grand Keeper of Records and Seal Case, also of Connecticut. Brother Case has

been with us several times at our Grand Lodge session and we have come to anticipate meeting him with much pleasure, and Brother Jacobs, although a new visiting brother among us, won all hearts by his pleasing manner and the beautiful expressions that fell from his lips in talking to the boys and the fine Pythian sentiment he leaves with us. 521

Some of the old Grand Lodge members, realizing that our Grand Keeper of Records and Seal, Brother Tinker, might not be with us many years, owing to his weakened physical condition, raised a purse of gold from the different lodges, amounting to \$150, which they presented to Brother Tinker, and he being unable on account of his feelings to respond, Brother Jacobs, of Connecticut, made the response in a most touching manner. 522

While our Grand Domain has not been over active in the establishment of new lodges in the last year, we have yet made a net gain of 102 members. Our new Grand Chancellor is a young lawyer, from the extreme northern part of the State, full of enthusiasm and an untiring worker, and we hope to see more work done this year. 523

The new officers elected and installed were as follows:

Grand Chancellor, S. R. Boring, Richford, Vt.

Grand Vice-Chancellor, J. M. Cady, St. Johnsbury, Vt.

Grand Prelate, W. C. Heath, Danville, Vermont.

Grand Keeper of Records and Seal, C. F. O. Tinker, St. Johnsbury, Vt. 524

Grand Master of Exchequer, F. W. Booth, Essex Junction, Vt.

The streets and business blocks of Rutland were decorated the finest, probably, that has been seen in that city for a good many years. Everything passed off very nicely, the program closing with a ceremonial by

the D. O. K. K. Wednesday evening, who worked a class of nine Tyros.

- 525 I think this session of the Grand Lodge left a very fine impression upon the people of Rutland, which we hope will be a benefit to the Lodge there this coming year. We were very sorry not to have you with us and also that Brother Ricker was not there. We certainly hope that you will be with us one year from now, when we will probably hold our Grand Lodge and Encampment at St. Albans.

Sincerely and fraternally yours,

526

(Signed) P. J. COWLES,
Supreme Representative.

The high cost of living has probably attracted your attention and you undoubtedly have let your voice swell the howling chorus against the trusts, the tariff, somebody or something which has caused it all. Between howls, try and figure out how your home would

- 527 get these high-priced necessities if you were gone.

SECTIONS ORGANIZED AND RE-ESTABLISHED DURING
THE QUARTER ENDING SEPTEMBER 30, 1910.

		Organized.
Section.	Location.	Date.
7113	Fremont, Ind.	July 1, 1910
7114	Newtown, Ind.	July 1, 1910
528 7115	Templeton, Pa.	July 1, 1910
7116	Post City, Texas	July 1, 1910
7117	Willoughby, Ohio	July 1, 1910
7118	De Ridder, La.	July 1, 1910
7119	Tahoka, Texas	July 1, 1910
7120	Dayton, Texas	July 1, 1910
7121	Leslie, Ark.	July 2, 1910
7122	Pleasant Valley, Ky.	July 2, 1910
7123	McDonough, Ga.	July 2, 1910

Section.	Location.	Organized.	
		Date.	
7124	Atwood, Ind.	July 2, 1910	529
7125	Gassaway, W. Va.	July 2, 1910	
7126	Hill Top, Ky.	July 2, 1910	
7127	Soldiers Grove, Wis.	July 5, 1910	
7128	Cleveland, Texas	July 5, 1910	
7129	Brookston, Ind.	July 5, 1910	
7130	Roosevelt, Okla.	Aug. 1, 1910	
7131	Blue Creek, W. Va.	Aug. 1, 1910	
7132	Olney, Texas	Aug. 1, 1910	530
7133	Williams, Ind.	Aug. 1, 1910	
7134	Bellmore, Ind.	Aug. 1, 1910	
7135	Helena, Ga.	Aug. 1, 1910	
7136	Carlton, Ga.	Aug. 1, 1910	
7137	Moorcroft, Wyo.	Aug. 1, 1910	
7138	Troy, Ohio	Aug. 1, 1910	
7139	Forsyth, Mont.	Aug. 4, 1910	
7140	Reagor, Texas	Aug. 4, 1910	
7141	Van Lear, Ky.	Aug. 4, 1910	531
7142	Paintsville, Ky.	Aug. 4, 1910	
7143	South Boston, Va.	Aug. 4, 1910	
7144	Covina, Cal.	Sept. 1, 1910	
7145	Attica, Kan.	Sept. 1, 1910	
7146	East Flat Rock, N. C.	Sept. 1, 1910	
7147	Lake Park, Ga.	Sept. 1, 1910	
7148	Gooding, Idaho	Sept. 1, 1910	
7149	Kiowa, Kan.	Sept. 1, 1910	
7150	Furman, S. C.	Sept. 1, 1910	532
7151	Little River, S. C.	Sept. 6, 1910	
7152	Saltillo, Miss.	Sept. 6, 1910	
7153	Ohley, W. Va.	Sept. 6, 1910	
7154	Buchanan, Ga.	Sept. 6, 1910	
7155	Anaheim, Cal.	Sept. 6, 1910	

	Section.	Location.	Re-Established. Date.
533	2997	Mt. Summit, Ind.	July 1, 1910
	3680	New Hartford, Conn.	July 1, 1910
	6050	Richwood, W. Va.	July 1, 1910
	2900	Sutton, W. Va.	July 1, 1910
	1950	Tiptonville, Tenn.	July 2, 1910
	3481	Castle Gate, Utah	July 2, 1910
	3629	Oakville, Ind.	July 2, 1910
	5603	Okmulgee, Okla.	July 5, 1910
534	5254	Montreal, Que.	July 5, 1910
	5038	Marquette, Mich.	July 5, 1910
	1470	Hancock, Mich.	July 5, 1910
	2505	Frankfort, N. Y.	Aug. 1, 1910
	6887	Altoona, Kan.	Aug. 1, 1910
	5086	Houghton, Mich.	Aug. 1, 1910
	5041	Calumet, Mich.	Aug. 4, 1910
	5071	Sand Point, Idaho	Sept. 1, 1910
	5956	Geneva, Ind.	Sept. 2, 1910
535	4101	Acme, W. Va.	Sept. 6, 1910
	5865	Opp, Ala.	Sept. 6, 1910
	6989	Red Level, Ala.	Sept. 6, 1910

KNIGHTS OF PYTHIAS INSURANCE DEPARTMENT NEWS

Official Publication of the
Supreme Lodge Knights of Pythias Insurance Department

536 Under the Direction of its Board of Control
Indiana Pythian Building, Indianapolis, Ind.
UNION B. HUNT.....Editor
Published Monthly by the Burt-Haywood Company,
Lafayette, Indiana.

All communications, including requests for change of address, etc., should be mailed to "The Knights of

Pythias Insurance Department News, 900 Indiana Pythian Building, Indianapolis, Indiana."

Entered as second-class matter, August 1, 1910, at the Postoffice at LaFayette, Indiana, under the Act of Congress of July 15, 1894. 537

OCTOBER, 1910.

KNIGHTS OF PYTHIAS INSURANCE DEPARTMENT NEWS is an eight-page monthly publication, devoted exclusively to the interests of the Insurance Department, and of the Order generally. 538

TERMS OF SUBSCRIPTION to non-members of the Order is fifty cents per year in advance. Subscriptions for members of the Insurance Department paid by the Board of Control.

NOTICE.—Sample copies are frequently sent to members of the Order not members of the Insurance Department, who are not subscribers, but no person will be asked to pay the subscription price until he has subscribed in the usual manner. 539

IMMEDIATE NOTICE of removal or change of residence, together with the new address, street and number, should be given. Be sure to give your former address as well as your new address, and also the number of your Section.

SUPREME LODGE DIRECTORY.

George M. Hanson, Supreme Chan. Calais, Me. 540
 Thomas J. Carling, Supreme V. C. Macon, Ga.
 Joseph H. Spearing, Sup. Prel. Shreveport, La.
 Fred E. Wheaton, S. K. R. & S. . . . Minneapolis, Minn.
 Thos. D. Meares, Sup. M. of E. Wilmington, N. C.
 Edward A. Horton, Sup. M. at A. . . . St. Thomas, Ont.
 Harry A. Drachman, Sup. I. G. Tucson, Ariz.
 H. M. Wadsworth, Sup. O. G. Philadelphia, Pa.

SUPREME TRIBUNAL.

- Hamilton Douglas, Sup. Tribune.....Atlanta, Ga.
 541 John F. Hilscher, Sup. Tribune.....St. Paul, Minn.
 Alexander M. Garber.....Montgomery, Ala.
 Colostin D. Meyers, Sup. Tribune...Bloomington, Ill.
 William H. Ellis, Sup. Tribune.....Quincy, Fla.
 Robert A. Brown, Recorder.....Frankfort, Ind.

BOARD OF CONTROL INSURANCE DEPARTMENT.

- George M. Hanson, S. C.....Calais, Me.
 Thos. J. Carling, S. V. C.....Macon, Ga.
 542 Henry P. Brown, P. S. C.....Cleburne, Tex.
 Chas. F. S. Neal.....Lebanon, Ind.
 U. S. G. Cherry.....Sioux Falls, S. D.
 Chas. S. Davis.....Denver, Colo.
 William Ladew.....New York, N. Y.
 George A. Bangs.....Grand Forks, N. D.
 William J. Duval.....Topeka, Kansas

OFFICERS INSURANCE DEPARTMENT.

- 543 Union B. Hunt.....President and General Counsel
 Indianapolis, Ind.
 W. A. Jenkins.....General Secretary
 Indianapolis, Ind.
 Geo. G. McConnell, M. D..Medical Examiner-in-Chief
 Indianapolis, Ind.
 Samuel O. Smart.....Auditor
 Indianapolis, Ind.

UNIFORM RANK.

- 544 George M. Hanson, Com.-in-Chief.....Calais, Me.
 Arthur J. Stobbart, Maj. Gen.....St. Paul, Minn.
 Ernest V. Lorenz, Adj. Gen.....St. Paul, Minn.
 Gen. Chauncey B. Hoyt.....Chief of Staff
 Portsmouth, N. H.
 Gen. Charles D. Pfaffln, Insp. Gen.....Denver, Colo.
 Gen. Henry L. Shenk, Com. Gen.....Lancaster, Pa.
 Gen. L. W. Halsey, Adv. Gen.....Milwaukee, Wis.

Harry G. Winsor.....Minneapolis, Minn.
Gen. J. C. Beard, Surg. Gen.....New Orleans, La.
Gen. G. H. Stibbs.....Chief Mustering Officer 545
Springfield, Mass.
Gen. J. C. Greenman.....Chief Signal Officer
Kansas City, Mo.
Col. J. H. Dickinson, Chap.-in-Chief...Richmond, Va.

INDIANA.

The Forty-second Annual Convention of the Grand Lodge of Indiana was held in the Indiana Pythian Building in the city of Indianapolis, October 4th and 5th, with about 1,200 members present. While there was no legislation of special interest, the session was very interesting.

Many pleasant incidents occurred, among which was a visit from Honorable John B. Cockrum, Grand Sire of the Odd Fellows. Brother Cockrum is not only an Odd Fellow, but has been for many years an earnest Knight of Pythias, having been since the creation of the Grand Tribunal of Indiana its Chief Tribune. Brother Cockrum was introduced by Past Supreme Chancellor Shively in a speech that abounded with good things, to which he made a fitting response.

Another pleasant incident of the meeting was the presentation of a gavel to Grand Chancellor-elect Petri by the members of his home lodge, Occidental No. 18, of Terre Haute. The gavel was elegantly decorated in silver, with proper inscriptions, and the wood from which the gavel was made was taken from the house in which the Grand Chancellor was born. The presentation speech was made by Past Supreme Representative James E. Watson, and was, indeed, an oratorical gem. The Grand Chancellor was very much overcome, but recovered sufficiently to make an appropriate response.

Charles S. Hernly, who was for many years Chairman of the Finance Committee, but who had not at-

549 tended the Grand Lodge for a number of years, was present and delivered a splendid address, which was received with enthusiasm. Brother Watson was also called upon to speak by the unanimous voice of the Grand Lodge, and with his usual eloquence inspired new enthusiasm for the Pythian cause.

The following Grand Lodge officers were elected:

Grand Chancellor, John Petri, Terre Haute; Grand Vice-Chancellor, Will P. Hart, Huntington; Grand Prelate, John W. Gaither, New Albany; Grand Master at Arms, John M. Lewis, Seymour; Grand Inner Guard, 550 Robert A. Brown, Franklin; Grand Outer Guard, Charles F. Remy, Columbus.

Harry Wade was re-elected Grand Keeper of Records and Seal; W. A. Morris, Grand Master of Exchequer, and John H. Frank, Grand Trustee. These brothers have served the Grand Lodge long and faithfully in their respective positions, and were accorded the honor of a unanimous re-election.

551 Past Grand Chancellor S. O. McDowell, of Kansas, who is spicy and entertaining fraternal correspondent of that Domain, was present and delivered a good fraternal address. Past Grand Chancellor W. T. Myers, one of the early Past Grand Chancellors of Indiana, and now residing at Los Angeles, California, was present and made a touching talk to the members of the Grand Lodge.

552 The Supreme Representatives made a report commending the action of the Supreme Lodge in restoring the semi-annual password, which report was enthusiastically adopted. The Representatives of the Insurance Department were given a cordial reception, and Indiana is on record as standing earnestly by this Department.

DON'T DROP OUT.

You don't lose anything by allowing yourself to drop out of the Order, unless it may be your own self-respect.

In fact, you are money in pocket. Indeed, if you live long enough, you might save as much as \$100—almost enough to bury you—by neglecting to pay your assessments. The chances are that you would not, though. And that \$100 would have cost your wife and family twenty times the amount. It doesn't hurt you, however. You will be dead, and perhaps in twanging your golden harp and participating in the joys of Paradise you may forget that such an element of self-respect ever entered into the scheme of creation. Who knows? 553

A TRUE INCIDENT.

554

The Secretary of one of our Sections told us recently of an occurrence in connection with the delivery of a thousand-dollar check to the widow of one of the members of his Section.

He said, "When I went to collect the March payment from the Brother, who is a near neighbor of mine, I asked him if he did not want to increase his insurance another thousand. He told me he did, but had just been putting it off from time to time, as he was a little hard up during the winter, but he guessed he might as well increase his insurance now. 555

"I was writing his application," said the Secretary, "when his wife came into the room and asked what we were doing. We told her, and she at once objected, saying that he had better wait a couple of months, as they had a number of obligations to meet in that time, and the Brother then decided to do as she requested. 556

"When the next monthly payment was due that Brother was in bed with a bad case of double pneumonia, and the check for one thousand dollars he carried was delivered to his widow before the second month had passed.

"When I delivered the check to the widow she said, 'Oh, if I had only let my husband sign that application for another thousand, how much better prepared I would have been to take care of our children.' "

This is an object lesson, Brothers, from an actual occurrence.

- 557 Don't put off this duty which you owe to your family.

If you know of a member of your Lodge who is not protecting his family as he ought to, talk to him about it, and induce him to take a certificate with his own Order, which furnishes as good protection as the world affords, and furnishes it at actual cost.

558 STATEMENT OF MEMBERSHIP AND INSURANCE FOR
QUARTER ENDING SEPTEMBER 30, 1910.

	FOURTH CLASS.	No.	Amount.
In force June 30, 1910....	11,644	\$22,049,500.00	
New, issued during third quarter. ....	.....	.....	.....
Reinstated during third quarter.	468	728,500.00	
559 Total.	12,112	\$22,778,000.00	
Forfeitures during third quarter.	704	\$1,059,000.00	
Transfers to Fifth Class during third quarter....	83	154,000.00	
Deaths during third quar- ter.	96	207,500.00	
560 Total terminated.	883	1,420,500.00	
In force September 30, 1910	11,229	\$21,357,500.00	

FIFTH CLASS.	No.	Amount.	
In force June 30, 1910....	61,941	\$88,183,958.00	
New, issued during third quarter	1,805	2,179,676.00	561
Reinstated during third quarter.	1,634	2,395,000.00	
Transfers from Fourth Class during third quarter....	83	154,000.00	
Total.	65,463	\$92,912,634.00	
Forfeitures during third quarter.	2,833	\$3,991,500.00	562
Deaths during third quarter	139	230,500.00	
Total terminated	2,972	\$4,222,000.00	
In force September 30, 1910	62,491	\$88,690,634.00	

563

RECEIPTS AND DISBURSEMENTS FOR QUARTER ENDING
SEPTEMBER 30, 1910.

Receipts.

Monthly Payments	\$686,369.87	
Interest.	18,767.84	
Protested Checks	2,199.06	
Miscellaneous Fees	19.69	
	\$707,356.46	564
Maturity of Investments	14,681.00	
	\$722,037.46	

Disbursements.

Death Claims	\$434,705.96
Refunds to Members	231.98

	Accrued Interest on Investments.....	2,408.18
	Redemption of Protested Checks of	
565	Secretaries.	2,532.70
	Discount on Assessments paid in advance.	120.32
	Advance Payments Applied	1,315.71
	Premium on Fidelity Bonds.....	35.52
	Superintendents.	24,646.75
	Commission to Secretaries	32,919.74
	Advertising, Printing and Stationery.	4,194.94
	Postage, Express, Telegraph and	
566	Telephone.	2,163.51
	Medical Examiners' Fees.....	3,964.00
	Legal Expenses	3,707.44
	Rent.	1,072.49
	Knights of Pythias Insurance News..	1,213.39
	Traveling Expenses	4,561.32
	Furniture and Fixtures	693.22
	Salaries of Officers and Employees...	13,830.90
	Miscellaneous Expenses	168.63
567	Actuarial Expenses	368.37
	Taxes and Expenses on Real Estate..	647.44
	Insurance Department Fees	4.00
		<hr/>
		\$535,506.51
	Amount invested during quarter.....	206,105.15
		<hr/>
		\$741,611.66
		<hr/> <hr/>
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STATEMENT OF RESOURCES AND LIABILITIES, SEPTEMBER 30, 1910.

<i>Ledger Assets.</i>		
<i>Cash in Banks:</i>		
Capital National Bank, Indianapolis.....	\$53,959.12	
Columbia National Bank, Indianapolis.....	10,250.69	
First National Bank, Chicago	13.21	
Central Trust Co., Chicago	91.67	\$64,314.69
<hr/>		
Cash in Office.....		750.00
Par Value Bonds		2,866,868.05
Book Value Bonds over Par.....		84,958.87
Real Estate, Texas	\$32,500.00	
Real Estate, Chicago	1,500.00	
<hr/>		
Mortgage Loans, Inter State Hotel Company.....	\$245,000.00	
J. R. Nail	4,500.00	
Paul Schulte.....	14,000.00	
<hr/>		
Miscellaneous Receivables.....		263,500.00
		25,084.81
		34,000.00
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Certificate Loans	913.30
Tenders Outstanding	1,048.89

Ledger Liabilities.

Advance Payments	\$10,139.25
W. H. Gurney Claim	189.70

Total Ledger Liabilities	\$10,328.95
Fourth Class Mortuary Fund	653,422.62
Fifth Class Mortuary Fund	2,290,431.67
Expense Fund, Insurance Department	387,255.37

\$3,341,438.61

\$3,341,438.61

Ledger Assets.

Non-Ledger Assets.

Furniture and Fixtures	\$9,075.36
Buttons, Emblems, etc.	222.11
Postage on hand	515.64

Due from Section Secretaries 45,122.72
 Interest accrued, not yet due. 38,623.42

Ledger Liabilities...... 10,328.95

Non-Ledger Liabilities.

All claims unpaid at face of certificate for which notice of death has been received:

Claims resisted (3), amount. \$5,000.00
 In process of adjustment (37), amount. 55,000.00
 No proofs received (68), amount. 113,000.00

Commissions to Sec. Secretaries 173,000.00
 All other liabilities 33,474.47
 Net Resources. 9,541.91
 3,208,652.53

\$3,434,997.86

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Net Resources.	\$3,208,652.53	
Net Fourth Class Mortuary Fund		\$583,326.81
Net Fifth Class Mortuary Fund		2,234,832.59
Net Expense Fund, Ins. Dept.		390,493.13
	<hr/>	<hr/>
	\$3,208,652.53	\$3,208,652.53

Fraternally submitted,
 UNION B. HUNT,
 President Insurance Department.

Attest:
 (L. S.) W. A. JENKINS,
 General Secretary.

Defendant's Testimony and Exhibits.

CIRCUIT COURT OF THE UNITED STATES. 585

NORTHERN DISTRICT OF NEW YORK.

ARTHUR V. H. SMYTH,
Plaintiff,

against

SUPREME LODGE KNIGHTS OF
PYTHIAS OF THE WORLD,
Defendant.

586

TO ROBERT J. SANSON, Esq., Solicitor for Complainant:
SIR:

PLEASE TAKE NOTICE that on Friday, May 10th, 1912, at ten o'clock in the forenoon of that day, at Room No. 902, Pythian Building, Indianapolis, Indiana, I shall proceed to take evidence on behalf of the defendant, pursuant to the Sixty-seventh Rule in Equity as amended, 587 before George L. Denny, Notary Public, and I shall produce at such time and place the following witness, namely, Walter O. Powers, of Indianapolis, Indiana. You are invited to attend and cross-examine.

Dated Albany, N. Y., May 2nd, 1912.

JOHN J. McCALL,
Solicitor for Defendant.

No. 25 North Pearl Street, Albany, N. Y. 588

Due service of the above notice is admitted this 3rd day of May, 1912, by mail.

ROBERT J. SANSON,
Solicitor for Complainant.

Endorsed: Notice of taking testimony.

589 CIRCUIT COURT OF THE UNITED STATES.

NORTHERN DISTRICT OF NEW YORK.

ARTHUR V. H. SMYTH,
Plaintiff,

against

SUPREME LODGE KNIGHTS OF
PYTHIAS OF THE WORLD,

590

Defendant.

The deposition of Walter O. Powers taken on behalf of the defendant, pursuant to notice, at Room 902 Pythian Building, Indianapolis, Indiana, commencing at ten o'clock in the forenoon of May 10, 1912, before George L. Denny, Notary Public in and for the County of Marion, in the State of Indiana.

591 Present: JAMES P. GOODRICH, Counsel for the Defendant. No one appearing for the Plaintiff.

WALTER O. POWERS, a witness on behalf of the defendant, being first duly sworn upon his oath, deposes and says and answers to questions by Counsel for Defendant, as follows, to-wit:

Question. You may state your name, age and place of residence.

592 Answer. (a) Walter O. Powers.
(b) Age 37.
(c) Indianapolis, Indiana.

Question. What is your occupation?

Answer. I am the General Secretary of the Insurance Department of the Supreme Lodge Knights of Pythias.

Question. How long have you occupied that position?

Answer. Since November 15, 1910.

593

Question. Previous to that time, if you were connected in any capacity with the Insurance Department, Supreme Lodge Knights of Pythias, state in what capacity and for how long.

Answer. For eight years previous to my selection as Secretary of the Insurance Department I was in charge of the Certificate Department of the Insurance Department.

Question. State what are your duties as General Secretary.

594

Answer. My duties as General Secretary are to keep and have charge of all of the books and records of the Board, to receive all funds and deposit the same daily in the proper depository and liquidate the accounts of the Insurance Department; to conduct the general correspondence with Section Secretaries and members and prepare and present to the Executive Committee all claims against the Insurance Department.

595

Question. Are you acquainted with and familiar with the books and records of the Insurance Department?

Answer. I am, not only by reason of my employment in the office since 1903, but also by reason of the fact that I have since my election as Secretary made a careful and exhaustive examination of the records and books of the Insurance Department.

Question. State what records, if any, of the Supreme Lodge you have in your custody as General Secretary.

596

Answer. I have in my office and under my care and custody the official records and minutes of the Supreme Lodge, Knights of Pythias so far as the same pertains to the Insurance Department and of all the Biennial Reports and accounts made by the Insurance Department to the Supreme Lodge since the year 1878.

Walter O. Powers.

597 Question. Have you in your possession as Secretary the original copies and minutes of the certificate or certificates of association of the Supreme Lodge Knights of Pythias?

Answer. I have.

Question. I wish you would please read to the Notary and incorporate in your deposition the original articles of association filed in the District of Columbia under date of August 5, 1870, if you have such in your
598 possession.

Answer. (Here the witness reads the following:)

"CERTIFICATE OF ASSOCIATION

OF THE

SUPREME LODGE KNIGHTS OF PYTHIAS.

Whereas, It is deemed advisable to have the Supreme Lodge Knights of Pythias, an incorporated
599 body, under the laws of the Congress of the United States, for the more perfect working of the beneficent intentions of the said Order.

And Whereas, With a view to promote this object, and as Grand Subordinate Lodges of the said Order have been formed or organized in various States and Territories, and will be hereafter formed in various other States and Territories of the United States, as well as foreign countries:

600 1. Now, Therefore, Be It Known, That in accordance with the Act of Congress entitled "An Act to provide for the creation of Corporations in the District of Columbia by General Law," approved May 5, 1870, the undersigned having associated themselves for the purpose and with the design of establishing and creating the corporation to be known and named the Supreme Lodge Knights of Pythias, do hereby make and authorize to be filed

in the office of the Register of Deeds, in the District of Columbia, this Certificate and these Articles of Association for the government of themselves, their associates, assigns and successors. 601

2. And Be It Further Known, That the beneficial association of which this is the certificate shall be known as the Supreme Lodge of the Knights of Pythias, the seal of which has been copyrighted by the Supreme Recording and Corresponding Scribe in the Clerk's Office of the Supreme Court of the District of Columbia. 602

3. And Be It Further Known, That Joseph T. K. Plant, Past Supreme Chancellor; Clarence M. Barton, of the District of Columbia; Venerable Supreme Patriarch Wilbur H. Meyers, of Pennsylvania; Supreme Chancellor Samuel Read, of New Jersey; Supreme Vice-Chancellor C. L. Russell, of Ohio; Supreme Banker W. A. Porter, of Pennsylvania; Supreme Guide John F. Comstock, of Connecticut; Supreme Inner Steward H. Clay Lloyd, of Kentucky; Supreme Outer Steward George H. Crager, of Nebraska; Past Supreme Chancellor Edward Dunn, Past Grand Chancellor Harry Kronheimer, J. R. N. Curtin, Francis Woods, Hugh G. Devine, Joseph S. Martin, of the District of Columbia, together with all Past Grand Chancellors of each and every State, Territory or Jurisdiction, now organized or hereafter to be organized under the authority of this Supreme Lodge, shall constitute from and after the filing of this Certificate as aforesaid, "The Supreme Lodge of Knights of Pythias of the World." 603 604

4. And Be It Further Known, That the Board of Trustees of said Supreme Lodge Knights of Pythias (who shall be elected annually) shall con-

605 sist of Joseph T. K. Plant, Clarence M. Barton, Edward Dunn, Joseph S. Martin, Francis Wood, Harry Kronheimer, and Hugh G. Devine, who shall serve until the election of their successors at the Annual Session of the Supreme Lodge in April, 1871, and shall serve without pay.

606 5. And Be It Further Known, That no contract for the disbursements of the moneys of the said Supreme Lodge shall be valid and of effect until ratified by the Board of Finance or Financial Committee.

607 6. And Be It Further Known, That the officers of the said Supreme Lodge Knights of Pythias of the World shall consist of Venerable Supreme Patriarch, Supreme Chancellor, Supreme Vice-Chancellor, Supreme Recording and Corresponding Scribe, Supreme Banker, Supreme Guide, Supreme Inner Steward, Supreme Outer Steward, all of whom shall be elected by ballot every alternate year, on the first day of the session of said Supreme Lodge; and the said Supreme Recording and Corresponding Scribe and Supreme Banker shall give such security for the faithful performance of their duty as may be ordered by said Supreme Lodge.

608 7. And Be It Further Known, That the said Supreme Lodge shall hold an annual session for the transaction of all business for the benefit and welfare of the Order, and that the Supreme Chancellor may, and on the call of fifteen Past Grand Chancellors, or Past Supreme Chancellors, shall convene the Supreme Lodge at any time business may demand, and all of said annual sessions shall be held in such city or town as the Supreme Lodge may determine upon at a regular session; provided, all spe-

cial or called sessions shall be held in the City of 609
Washington, D. C.

8. And Be It Further Known, That a Representative from a majority of the Grand Lodges working under the jurisdiction of this Supreme Lodge shall constitute a quorum for the transaction of business.

9. And Be It Further Known, That the said Supreme Lodge shall have power to alter and amend its Constitution and By-Laws at will, and that it shall have power to prescribe modes of initiation, etc., for the working of said Order, and no Grand or Subordinate Lodges, purporting to be Knights of Pythias, shall have legal standing unless chartered by or through the regularly elected officers of this Supreme Lodge, in regular or called session, or by the Supreme Chancellor during the recess of said Supreme Lodge. 610

In Witness Whereof, We, the undersigned officers and members of the Supreme Lodge of Knights of Pythias of the World, have hereunto affixed our names and seals this fifth day of August, A. D. 1870. 611

JOS. T. K. PLANT	(Seal)	
EDWARD DUNN	(Seal)	
FRANCIS WOOD	(Seal)	
JOS. S. MARTIN	(Seal)	612
CLARENCE M. BARTON	(Seal)	
H. KRONHEIMER	(Seal)	
HUGH G. DEVINE	(Seal)."	

Question. You may state as to whether or not these articles of association were amended at any time thereafter and if so state when.

613 Answer. They were, on the fifth day of October, 1875.

Question. Have you such amended act of association in your custody as Secretary.

Answer. I have.

Question. Please read it to the Notary and incorporate it as a part of your testimony.

Answer. (Witness reads the following:)

614

"AMENDED ACT OF INCORPORATION
OF THE

SUPREME LODGE KNIGHTS OF PYTHIAS.

Whereas, On the 5th day of August, A. D. 1870, it was deemed necessary to incorporate the Supreme Lodge Knights of Pythias of the World, under the Act of Congress, approved May 5th, A. D. 1870, entitled "An Act to provide for the creation of Corporations in the District of Columbia by General Law," and

615

Whereas, The body corporate thereby created has powers conferred on them by said law to make proper laws to govern themselves and to alter and amend their act or deed of incorporation, it is therefore, in view of the said law, that the following amendments to said deed of incorporation are acknowledged by the proper officers and members and placed on file in said District.

616

And it is hereby agreed and understood, that everything in these articles different to those in the old articles shall be the act of incorporation, jointly with so much of the old act as may not be altered by these articles. And which said articles of incorporation are hereby amended and altered as follows:

1st. To Section Two add the words "and has 617
also been recorded in the office of the Librarian of
Congress, in the Capitol of the United States, at
Washington, D. C."

2d. That all of Section Three (3) in the paper
filed August 5th, 1870, is hereby declared void, and
the following is inserted in lieu thereof: "The Su-
preme Lodge shall consist of all Past Supreme
Chancellors, the Supreme Officers and two Su- 618
preme Representatives from each Grand Lodge,
under the jurisdiction of said Supreme Lodge until
there are 20,000 members belonging to one Grand
Lodge, and one Supreme Representative for each
additional 10,000 members. Provided, That no
Grand Lodge shall be entitled to more than four
(4) Supreme Representatives."

3d. That Section Four (4) be altered to read as
follows: "The Board of Trustees shall consist of 619
Supreme Chancellor S. S. Davis, of New Hamp-
shire; S. K. of R. & S. Joseph Dowdall, of Ohio;
S. M. of E. John B. Stumph, of Indiana, and Su-
preme Vice Chancellor D. B. Woodruff, of Geor-
gia, who shall serve until the election of their suc-
cessors, it being understood that the four principal
officers of the Supreme Lodge shall compose the
Board of Trustees."

4th. That all of Section Five (5) is hereby an- 620
nulled.

5th. That Section Six (6) shall hereafter be
Section Five (5), except the words: "On the first
day of the session of said Supreme Lodge."

6th. That Section Seven (7) shall hereafter be
Section Six (6), and shall read and be as follows:
"That the said Supreme Lodge shall hold an annual

621 session at such time and place as a majority of its members present may determine, for the transaction of all business for the benefit and welfare of the Order, and that the Supreme Chancellor may, and on the call of the Supreme Representatives of ten Grand Jurisdictions in writing, shall convene an extra session of said Supreme Lodge at Washington, D. C."

622 7th. And, further, all succeeding Sections are hereby altered in number to correspond as above and the names of all Supreme Officers are hereby made to agree with the Constitution of the Order. And it is hereby declared that all and singular the parts of the incorporation of August 5, 1870, not altered by this supplemental paper, are hereby ratified and reaffirmed, and that said Supreme Lodge shall be and remain a body corporate for the

623 term of twenty years. And for the purpose of a compliance with the Act of Congress heretofore cited, We, S. S. Davis, of New Hampshire; Joseph Dowdall, of Ohio; John B. Stumph, of Indiana, and D. B. Woodruff, of Georgia, officers and trustees of said Supreme Lodge; Past Supreme Chancellor Jos. T. K. Plant, of the District of Columbia; Past Supreme Chancellor Samuel Read, of New Jersey, and Past Grand Chancellor Frederick D. Stuart, G. J. L. Foxwell, Richard Goodhart, A. T. Cavis and A. J. Gunning, all of the District of Columbia, as incorporators, have hereunto affixed their hands and seal this fifth day of October, A. D. 1875.

S. S. DAVIS, S. C. (Seal)

JOSEPH DOWDALL, S. K. R. S. (Seal)

JOHN B. STUMPH, S. M. E. (Seal)

D. B. WOODRUFF, S. V. C. (Seal)

SAMUEL READ, P. S. C.	(Seal)	625
JOS. T. K. PLANT, P. S. C.	(Seal)	
FRED D. STUART, P. G. C.	(Seal)	
G. J. FOXWELL, P. G. C.	(Seal)	
RICHARD GOODHART, P. G. C.	(Seal)	
A. T. CAVIS, P. G. C.	(Seal)	
A. J. GUNNING, P. G. C.	(Seal)"	

Question. Was there any further act or certificate of incorporation filed by the Supreme Lodge Knights of Pythias after the filing of the act last read? If so, state when. 626

Answer. There was, on the seventh day of March, 1882.

Question. Have you such amended act or certificate of incorporation in your possession?

Answer. I have.

Question. Please read it to the Notary and incorporate it as a part of your testimony. 627

Answer. (Here the witness reads the following:)

"CERTIFICATE OF INCORPORATION
OF THE
SUPREME LODGE KNIGHTS OF PYTHIAS.
"Amended Act."

Whereas, By virtue of the provisions of the Act of Congress, approved May 5, A. D. 1870, entitled 'An Act to provide for the creation of corporations 628 in the District of Columbia by general law,' the Supreme Lodge Knights of Pythias of the World was duly incorporated on the 5th day of August, A. D. 1870, by compliance with the terms of the said act of Congress, and the Certificate of Incorporation was, on the said 5th day of August, A. D. 1870, duly filed and recorded among the deeds of

629 Incorporation, folio 75, in the office of the Recorder of Deeds, in the District of Columbia.

630 And Whereas, in pursuance of the power and authority in said corporation lodged, afterwards, on the 5th day of October, A. D., 1875, certain articles of the said act of incorporation were amended, and the unchanged articles ratified and confirmed, and proper articles of amendment duly executed, in conformity with the requirements of the law aforesaid, and recorded or filed for record in the office of the Recorder of Deeds aforesaid, on the said 5th day of October, 1875.

631 And Whereas, it is deemed expedient that the following additional amendments to the said deed of incorporation should be made, and to that end the same are now executed and acknowledged by the proper officers and members and placed on file for record. And it is hereby agreed and understood that every clause and provision in these articles as amended, in conflict with the original and amended act of incorporation, shall be the act of incorporation jointly with every clause in the oldest or the amended act not altered by these articles.

632 Now, therefore, the articles of incorporation are hereby amended and altered as follows, viz.:

6. Section 6 is hereby amended and shall read and be as follows, viz.:

“ That the sessions of the Supreme Lodge shall be held at such times and in such places as the Supreme Lodge may, in accordance with constitution and laws, determine for the transaction of all business for the benefit and welfare of the Order, and the Supreme Chancellor shall convene extra sessions of the Supreme Lodge in the manner pre-

scribed in the Constitution of the said Supreme Lodge." 633

That the following additional section, to be known as Section 9, be added to the act of incorporation as amended, viz.:

9. "That the said Supreme Lodge shall have power to establish the Uniform Rank and the Endowment Rank upon such terms and conditions, and governed by such rules and regulations as to the said Supreme Lodge may seem proper." 634

And it is hereby declared that all and singular the parts of the act of incorporation of August 5, 1870, not altered by the supplementary paper of the 5th of October, A. D. 1875, and all the parts of the said last mentioned paper, so far as neither of the said original or supplementary acts is changed by this paper, are hereby ratified and reaffirmed, and the said Supreme Lodge shall be and remain a body corporate for the term of twenty years. 635

And for the purpose of a compliance with the terms of the Act of Congress heretofore cited, we George W. Lindsay, of Maryland, Joseph Dowdall, of Ohio, John B. Stumph, of Indiana, and John P. Linton, of Pennsylvania, officers and trustees, of the said Supreme Lodge; Past Supreme Chancellor, D. B. Woodruff, of Georgia, Past Supreme Chancellor Samuel Read, of New Jersey, Past Grand Chancellors G. J. L. Foxwell, A. J. Gunning, John W. Thompson, Joseph T. Coldwell, and Past Supreme Chancellor Justus H. Rathbone, of the District of Columbia, all hereunto affixed their hands and seals this 7th day of March, A. D. 1882. 636

Walter O. Powers.

- 637 GEORGE W. LINDSAY, (Seal)
 JNO. P. LINTON, (Seal)
 JNO. B. STUMPH, (Seal)
 JOSEPH DOWDALL, (Seal)
 D. B. WOODRUFF, P. S. C. (Seal)
 SAMUEL READ, P. S. C. (Seal)
 G. J. L. FOXWELL, (Seal)
 A. J. GUNNING, (Seal)
 JNO. W. THOMPSON, (Seal)
 638 JOS. T. COLDWELL, (Seal)
 J. H. RATHBONE, (Seal)."

Question. You may state whether or not the Supreme Lodge Knights of Pythias was afterwards either reincorporated or reorganized and if so, state how and when.

- Answer. It was reincorporated on June 29, 1894, by a special act of Congress, which will be found in the 28th U. S. Statute at Large, pages 96 and 97.
 639 This act was further amended June 7, 1900, by a special act of Congress which will be found in the 31st U. S. Statute at Large, page 708, Chapter 861; and was again further amended by a special act of Congress, approved February 26, 1907, and found in the U. S. Statutes at Large of the 59th Congress, Volume 34, Part 1, page 934.

- Question. In what year was the Insurance Branch of the Supreme Lodge Knights of Pythias first
 640 organized?

Answer. 1877.

Question. By what name was it then known?

Answer. The Endowment Rank of the Supreme Lodge Knights of Pythias.

Question. How was membership in the Endowment Rank attained?

Answer. Only through membership in the Order of Knights of Pythias.

Question. Into how many classes was the Endowment Rank divided? 641

Answer. Into two classes.

Question. What were they?

Answer. The First and Second Classes. The First Class included those members who desired insurance in the amount of \$1,000, and the Second Class was composed of members carrying \$2,000 of insurance.

Question. If another Class was created, state when.

Answer. The Third Class was created in 1880 and 642 was composed of members between the ages of fifty and sixty years and were limited to \$1,000 insurance.

Question. On what basis were the assessments or contributions of the members fixed and for what amount?

Answer. On the basis of the amount of insurance in force and at the rate of \$1.00 per month for each \$1,000 of insurance.

Question. Could the members be required to pay 643 more than twelve assessments in any given year?

Answer. They could.

Question. In what way?

Answer. By means of levying extra assessments.

Question. Was any additional class or classes of the Insurance Department afterwards created? If so, state fully what class, if any, was created and upon what basis.

Answer. There was a Fourth Class, which was 644 established in the year 1884 and the assessment plan was supplanted by the anti-mortem plan. Most of the members of the first three classes enumerated above transfer of this class. The members were assessed on the graded system of assessments based upon the expectancy of life.

Question. Was any known table of mortality rates

645 used in fixing the rates of contribution of Fourth Class members?

Answer. No.

Question. You have stated that First, Second and Third Class members were invited to transfer to the Fourth Class. You may state what conditions, if any, were placed upon such transfers.

646 Answer. Members were transferred from the First, Second and Third Classes to the Fourth Class at their original entry age and without medical examination. If transferred from the old classes prior to July 1, 1885, they were rated to August 1, 1888, based on original entry; from August 1, 1888, on they were rated at age at transfer.

Question. How long did the rates fixed in 1884 for Fourth Class members remain in force?

647 Answer. Until March 1, 1894, when dues of five cents per thousand were added to the rates then in force.

Question. Was any change made after 1894? If so, state when.

Answer. The rates were readjusted on September 1, 1901.

Question. Upon what basis were the rates established in 1901 fixed?

648 Answer. Upon the basis of the National Fraternal Congress table, but in fixing the rates, no provision was made for expenses and the by-law fixing the rates provided for 15 per cent. of such rates to be used for expense purposes. In addition to the above, members were rated at their original ages rather than at their attained ages. The mortality experience of the Endowment Rank up to that time had been in excess of that employed in the National Fraternal Congress table.

Question. What amount of reserve, if any, had

been accumulated in 1901 when these new rates were established? 649

Answer. None whatever. In fact, there was a deficit of about one-half million dollars.

Question. You say that the insurance feature of the Supreme Lodge Knights of Pythias was first known as the Endowment Rank. I will ask you to state by what name it is known at this time.

Answer. It is known as the Insurance Department of the Supreme Lodge Knights of Pythias, such change in name being made by the Supreme Lodge in 1906. 650

Question. Has any additional class or classes been created since the organization of the Fourth Class in 1884?

Answer. There has.

Question. How many and by what name?

Answer. One class, known as the Fifth Class.

Question. When was that class created?

Answer. It was created at the Session of the Supreme Lodge in 1906 and became operative on January 1, 1907. 651

Question. How was the Fifth Class organized and constituted?

Answer. It was organized by the statutes of the Supreme Lodge Knights of Pythias and membership in the Fifth Class was open to all members of the Order of Knights of Pythias in good standing, who could pass a suitable medical examination and were under sixty years of age, except members of the Fourth Class, who were permitted to transfer to the Fifth Class at their attained age without medical examination and the limit as to age requirements did not apply to Fourth Class members so transferred. 652

Question. What table of rates, if any, was used as the basis of the contribution of the members of the Fifth Class?

653 Answer. The American Experience Table of Mortality with an interest assumption of $3\frac{1}{2}$ per cent.

Question. Was there any expense loading provided for in fixing the Fifth Class rates?

Answer. There was.

Question. You may state, if you know, about what the expense loading was.

Answer. The expense loading was about 13 per cent. of the premium.

654 Question. What was the amount of Mortuary Fund, if any was on hand, when the Fifth Class became effective January 1, 1907?

Answer. It was \$1,345,259.35.

Question. What disposition, if any, was made of this Mortuary Fund?

Answer. It still remained to the credit of those members who remained in the Fourth Class.

Question. What is the composition of the Supreme

655 Lodge Knights of Pythias and how are its members selected?

Answer. The Supreme Lodge Knights of Pythias is composed of two duly elected and qualified representatives from each of the different Grand Lodges — some 52 in number — there being one Grand Lodge for each state and territory in the United States; of the District of Columbia and for some of the Provinces of Canada.

656 Question. Are there any members of the Supreme Lodge other than the elective members?

Answer. Yes. The sitting Supreme and all Past Supreme Chancellors are ex officio members of the Supreme Lodge.

Question. Is any Grand Lodge entitled to more than two representatives?

Answer. Yes.

Question. Upon what basis is the extra representation fixed, if you know?

Answer. On the basis of the membership in that particular jurisdiction. 657

Question. What is the composition of a Grand Lodge?

Answer. It is composed of duly elected and qualified representatives of the Subordinate Lodges in that particular jurisdiction.

Question. What is the composition of a Subordinate Lodge?

Answer. It is a local organization of the Order composed of the particular members of the Order of Knights of Pythias belonging to it. 658

Question. Are there any subdivisions of the Insurance Department? If so, by what name are they known and how are they organized?

Answer. They are and are known as Sections. These Sections are composed of members of the Order who desire the insurance feature.

Question. Into how many Sections at this time are the various members of the Insurance Department divided? 659

Answer. There are approximately 4,330 Sections in force at this time.

Question. How is the business of the Insurance Department controlled and governed?

Answer. It is controlled and governed by the Supreme Lodge Knights of Pythias through by-laws properly enacted and passed for the government and control of this branch of the Order. 660

Question. What executive officers, if any, have direct charge of the Insurance Department and how are they selected?

Answer. The Insurance Department is under the direct control of the Board of Control, a body of nine men elected by the Supreme Lodge Knights of Pythias, and in addition to these nine elective members, the Past

- 661 Supreme Chancellor and the Supreme Chancellor are both ex officio members of this body.

Question. How frequently does the Supreme Lodge hold its session?

Answer. It holds biennial sessions.

Question. For whose benefit was the Endowment Rank, and is the Insurance Department of the Supreme Lodge Knights of Pythias carried on?

- Answer. For the benefit of its members and their
662 beneficiaries.

Question. Is it conducted or carried on for profit in any way?

Answer. It is not.

Question. You may state what was the composition of the Endowment Rank and what is and has been the composition of the Insurance Department.

- Answer. This society in its Endowment Rank was and in its Insurance Department is composed of an
663 unlimited number of members, organized into subordinate bodies known as Sections and whose obligations and rights and the rights of their beneficiaries are limited by the Class or Plan to which each member belongs. Membership in the Insurance Department can be attained only by members in good standing in a subordinate lodge of this Society.

Question. Have you read a testimony of the plaintiff in this case, Arthur V. H. Smyth?

- 664 Answer. I have.

Question. Have you examined a copy of the plaintiff's Exhibit "C," purported to be the Constitution and General Laws of the Endowment Rank Knights of Pythias?

Answer. I have.

Question. When, if you know, was the Constitution and General Laws set out in that pamphlet promulgated?

Answer. On August 20, 1886.

665

Question. Were these laws at any time thereafter repealed?

Answer. They were.

Question. When?

Answer. At the session of the Supreme Lodge held at Cincinnati, Ohio, June 12 to 23, inclusive, 1888, at which session a new set of Constitution and By-Laws was promulgated, effective August 1, 1888.

Question. Have you in your possession, Mr. Powers, the original minutes, records, and journal of the Supreme Lodge Knights of Pythias, showing the adoption and enactment of the constitution and by-laws governing the Insurance Department at the June session, 1888, of the Supreme Lodge Knights of Pythias?

Answer. I have.

Counsel for defendant now hands to the Notary a pamphlet and asks notary to mark the same defendant's Exhibit "A." The Notary marks the pamphlet Defendant's Exhibit "A."

667

Question. I hand you, Mr. Powers, the pamphlet marked Defendant's Exhibit "A" and ask you to state if you know what it is and what it contains?

Answer. This pamphlet marked Defendant's Exhibit "A" contains a true and correct copy of the constitution and by-laws adopted by the Supreme Lodge, Knights of Pythias, at the June session, 1888, which constitution and by-laws were promulgated and became effective August 1, 1888. The pamphlet contains all of the constitution and all of the by-laws in force and effective from and after August 1, 1888.

668

Question. By what vote was this constitution and by-laws adopted?

Answer. By a unanimous vote — 107 ayes, no nays.

669 Question. What was the total vote of the Supreme Lodge at its session in 1888?

Answer. There were one hundred seven representatives present and authorized to sit at this convention, each being entitled to one vote.

670 Question. I call your attention, Mr. Powers, to section 5 of article 3 of the Constitution as set out in Plaintiff's Exhibit "A" and ask you if the form of Fourth Class certificates set out in section 5 was ever at any time thereafter changed by the Supreme Lodge Knights of Pythias?

Answer. It was.

Question. When, if you know?

Answer. At the 17th session of the Supreme Lodge held at Kansas City, Mo., August 23 to September 3, 1892.

671 Question. Have you in your possession the minutes of the Supreme Lodge Knights of Pythias showing the enactment of the by-laws changing the form of such certificate?

Answer. I have.

Question. Please give to the Notary the particular section and article of the revision of 1892 which changed the form of the Fourth Class certificates and state what the vote was upon the adoption of such section.

672 Answer. Section 3 of article 3 was adopted at the 1892 session of the Supreme Lodge held August 23 to September 3 at Kansas City, Mo., by the unanimous vote of all the members present and said by-law known as section 3, article 3, is as follows:

"Sec. 3. The Board of Control of the Endowment Rank shall, through its President and Secretary, issue to all members of the Rank who are entitled thereto, a Certificate of Membership stipu-

lating the amount of endowment applied for, and bearing date of issue to correspond with date of final acceptance of the application. Said Certificate shall contain the following conditions and provisions: 673

FORM OF CERTIFICATE OF MEMBERSHIP.

Endowment Rank, Knights of Pythias of the World.

This Certificate Witnesseth that 674
is a member of Section No. of the Endowment Rank, Knights of Pythias of the World, said membership being based upon evidence received that he is a member in good standing of a subordinate lodge of the Order of Knights of Pythias, and upon the declarations, representations and agreements made in his application bearing date of, and the statement certified by him therein to the Medical Examiner, which application is filed in the office of the Board of Control of the Endowment Rank and made a part of this contract. 675

In consideration of the payment by said member of the prescribed admission fee and of the payment hereafter to said Endowment Rank of all monthly payments, assessments and dues as required, and the full compliance with all the conditions herein contained and with the laws governing this Rank, now in force or that may hereafter be enacted by the Supreme Lodge Knights of Pythias of the World, or the Board of Control of said Rank, and shall be in good standing under said laws, the Board of Control of the Endowment Rank, Knights of Pythias of the World, will pay to the sum 676

- 677 of Thousand Dollars out of the Endowment Fund of the Rank in accordance with and under the laws governing the payment of benefits, upon due notice and satisfactory proof of death, and good standing in the Rank at time of death, and a full receipt and surrender of this Certificate, subject, however, to the conditions, restrictions and limitations subscribed to by said member in his application, and to the further conditions and agreements hereinafter made, and provided, also, that this Certificate shall not have been surrendered by said member or cancelled at his request and another Certificate issued in accordance with the laws of the Rank.
- 678

- 679 Provided, further, that the beneficiary herein designated shall acquire no interest whatever in the Certificate, nor in the Endowment Fund, until the benefits shall have been lawfully proved by reason of the death of said member and no subsequent change in the beneficiary shall have been made. In case of the death of said beneficiary during the lifetime of the member, the benefit accruing under this certificate shall be payable as provided for in Article VI, Section 1 of the General Laws of the Endowment Rank. And it is understood and agreed that any violation of the within mentioned conditions, or the requirements of the laws now or hereafter in force governing this Rank, shall render this Certificate and all claims thereunder, null and void, and the said Endowment Rank shall not be liable for the above sum or any part thereof.
- 680

IN WITNESS WHEREOF, We have hereunto subscribed our names and affixed the seal of the Supreme Lodge, Knights of Pythias of the World,

Walter O. Powers.

at Chicago, Illinois, this day 681
of

.....

President Board of Control.

Attest:

Secretary Board of Control.

I hereby accept this Certificate of Membership
subject to all conditions therein contained. 682

Signature of member

Dated at this day
of, 18.....

Attest:

Sec'y Section No.,
Endowment Rank, K. of P."

Question. How many representatives were there in
this session of the Supreme Lodge? 683

Answer. One hundred twenty-three.

Question. How many of these were from the State
of New York?

Answer. Two.

Question. You say, Mr. Powers, that there was a
general revision of Fourth Class rates made by the Su-
preme Lodge in 1901?

Answer. There was.

Question. Have you in your possession the minutes 684
of the Supreme Lodge showing the enactment of the
by-laws revising Fourth Class rates in 1901?

Answer. I have.

Question. What particular part of the Constitution
and By-Laws adopted in 1901 changed the Fourth
Class rates?

Answer. It was section 4 of article 4.

Question. When was that amendment adopted?

685 Answer. It was adopted July 11, 1901.

Question. By what vote was section 4 of article 4 of the by-laws of 1901 adopted?

Answer. By the unanimous vote of all members present.

Question. How many members were present at this convention?

Answer. One hundred twenty-seven.

686 Question. Will you please read into your deposition as an answer to this question section 4 of article 4 of the by-laws adopted in 1901?

Answer. Section 4 of article 4 of the by-laws adopted in 1901 reads as follows, to-wit:

687 "Sec. 4. Each applicant for membership in the Endowment Rank shall, upon completion of his application for transmission to the Board of Control, pay to the Secretary of the Section, in accordance with his age, occupation and the amount of endowment applied for, a monthly payment as provided herein, and as provided in Section 5 of this Article; and if accepted, such member shall continue to pay the same amount each month thereafter as long as he remains a member of the Endowment Rank, except as provided in Section 6 of this article or unless otherwise provided for by enactments of the Supreme Lodge or Board of Control of the Endowment Rank Knights of Pythias; and every person who is at present a member of the Endowment Rank shall pay each month hereafter, as long as he remains a member of the Endowment Rank, monthly payments as fixed by the table herein in accordance with the age at which he has been immediately heretofore rated and in accordance with the amount of his endowment and in accordance with his occupation, as provided in Section 5

688

of this Article, so long as he shall remain a member
of the Endowment Rank, except as provided in
Section 6 of this Article or unless otherwise pro-
vided by enactment of the Supreme Lodge or Board
of Control of the Endowment Rank Knights of
Pythias. 689

Members having \$4,000 or \$5,000 endowments
shall pay four or five times, respectively, the rates
for \$1,000 endowments, according to the table
herein. 690

TABLE OF MONTHLY PAYMENTS.

Age.	Amount. \$500	Amount. \$1,000	Amount. \$2,000	Amount. \$3,000	
21	\$.45	\$.90	\$1.80	\$2.70	
22	.50	.95	1.90	2.85	
23	.50	1.00	2.00	3.00	
24	.50	1.00	2.00	3.00	691
25	.55	1.05	2.10	3.15	
26	.55	1.10	2.20	3.30	
27	.55	1.10	2.20	3.30	
28	.60	1.15	2.30	3.45	
29	.60	1.20	2.40	3.60	
30	.65	1.25	2.50	3.75	
31	.65	1.25	2.50	3.75	
32	.65	1.30	2.60	3.90	
33	.70	1.35	2.70	4.05	692
34	.70	1.40	2.80	4.20	
35	.75	1.45	2.90	4.35	
36	.75	1.50	3.00	4.50	
37	.80	1.60	3.20	4.80	
38	.85	1.65	3.30	4.95	
39	.85	1.70	3.40	5.10	
40	.90	1.75	3.50	5.25	
41	.90	1.85	3.70	5.55	

693	Age.	Amount.	Amount.	Amount.	Amount.
		\$500	\$1,000	\$2,000	\$3,000
	42	.95	1.90	3.80	5.70
	43	1.00	2.00	4.00	6.00
	44	1.05	2.10	4.20	6.30
	45	1.10	2.15	4.30	6.45
	46	1.15	2.25	4.50	6.75
	47	1.20	2.35	4.70	7.05
694	48	1.25	2.45	4.90	7.35
	49	1.30	2.60	5.20	7.80
	50	1.35	2.70	5.40	8.10

That the amounts received under said Table shall be divided into two separate and distinct funds, to be known as the mortuary and expense funds; that 90 per cent of the receipts from assessments under said table shall be paid into, and be known as a mortuary fund, and shall be used exclusively in the payment of claims incurred under certificates of membership, whether by death or otherwise, and 10 per cent of the receipts from assessments under said table shall be paid into and shall be the expense fund, to be used in the payment of items of expense and the liquidation of all claims against the Endowment Rank other than those provided for above; provided, that at any time when, in the judgment of the Board of Control the condition of the finances of the Endowment Rank will permit, the Board of Control is authorized and directed to suspend the collection of monthly payments. This amendment shall take effect and be in force from and after August 31, 1901."

Question. Were the rates of contribution of the members of the Fourth Class changed by the Supreme

Lodge Knights of Pythias at any time since 1901? If 697
so, state when.

Answer. Yet, at the session of the Supreme Lodge held in August, 1910.

Question. When, if you know, did the changes so made become effective?

Answer. On January 1, 1911.

Question. Have you in your possession the minutes of the Supreme Lodge Knights of Pythias showing the enactment of the by-laws in 1910 changing Fourth Class 698
rates?

Answer. I have.

Counsel for defendant now hands to the Notary a pamphlet and asks that it be marked defendant's Exhibit "B."

Question. I hand you defendant's Exhibit "B," Mr. Powers, and ask you to state if you know what it is. 699

Answer. This Exhibit "B" is a full, true and correct copy of all the by-laws enacted by the Supreme Lodge at its session in 1910, changing Fourth Class rates and all the by-laws adopted by the Supreme Lodge at such session, for the government of the Insurance Department of the Supreme Lodge Knights of Pythias.

Question. How many representatives and members were present at this session of the Supreme Lodge held in 1910? 700

Answer. One hundred forty-one.

Question. What was the vote upon the adoption of the by-laws set out in the defendant's Exhibit "B"?

Answer. The vote was 97 in favor of the adoption of the by-laws and 44 against.

Question. How many representatives were present from the State of New York at this session of the Supreme Lodge?

Walter O. Powers.

701 Answer. Four.

Question. Can you give, from year to year, the number of members, the attained age, the amount of insurance, the mortuary receipts, the number of deaths and the amount of death losses at the end of any fiscal year.

Answer. I can.

702 Question. Please state the attained age, the number of members, the amount of insurance, the mortuary receipts, the number of deaths and the amount of death losses incurred and the total amount of the mortuary fund in the Fourth Class for the year ending December 31, 1910, and December 31, 1911.

Answer.

SCHEDULE OF FOURTH CLASS MEMBERSHIP, AMOUNT
OF INSURANCE, MORTUARY RECEIPTS, NUMBER
OF DEATHS AND LOSSES INCURRED AT
ATTAINED AGE

703

OF THE

SUPREME LODGE, KNIGHTS OF PYTHIAS, INSURANCE DEPARTMENT.
Dec. 31, 1910.

	Attained age.	Number of members.	Amount of insurance.	Mort. receipts during year.	No. of deaths.	Amt. death losses incurred.
	21.....	.....	.....	.....	.....	.....
	22.....	.....	.....	.....	.....	.....
	23.....	.....	.....	.....	.....	.....
	24.....	.....	.....	.....	.....	.....
704	25.....	2	\$3,000	\$37.36	1	\$1,000
	26.....	9	14,000	134.68	1	1,000
	27.....	20	27,000	269.52	.....	.....
	28.....	29	44,000	442.08	.....	.....
	29.....	20	25,500	260.76	1	1,000
	30.....	38	52,500	555.24	.....	.....
	31.....	44	55,000	586.80	.....	.....
	32.....	51	63,000	673.32	.....	.....
	33.....	37	50,500	562.80	.....	.....
	34.....	65	86,500	955.38	1	2,000
	35.....	65	83,500	972.06	1	3,000

Walter O. Powers.

Attained age.	Number of members.	Amount of insurance.	Mort. receipts during year.	No. of deaths.	Amt. death losses incurred.	
36.....	62	87,500	1,017.24	1	1,000	705
37.....	89	134,500	2,251.80	.....	.....
38.....	102	144,500	2,230.15	.....	.....
39.....	106	147,500	2,488.20	2	3,000	
40.....	118	169,000	3,045.76	2	2,000	
41.....	131	195,000	3,756.60	2	3,000	
42.....	137	212,000	3,835.60	3	7,000	
43.....	144	241,500	3,840.04	1	1,000	
44.....	188	316,000	4,988.20	3	6,000	
45.....	185	336,500	9,525.60	3	4,000	706
46.....	194	336,500	9,048.60	2	5,000	
47.....	189	346,000	10,715.06	4	5,000	
48.....	194	366,000	11,075.40	2	2,000	
49.....	235	432,000	12,006.20	3	6,000	
50.....	234	451,000	14,495.48	14	30,000	
51.....	234	443,500	16,435.20	7	19,000	
52.....	235	425,000	17,475.20	4	10,000	
53.....	229	421,000	18,099.24	12	24,000	
54.....	348	481,000	18,992.00	15	26,000	
55.....	227	451,500	18,009.60	8	15,000	
56.....	250	498,000	20,868.00	8	13,000	
57.....	279	550,500	22,115.24	11	22,000	
58.....	356	532,500	22,836.00	14	30,000	
59.....	285	570,000	22,460.60	9	18,000	707
60.....	297	572,500	21,617.72	12	30,000	
61.....	336	665,000	19,920.40	14	31,000	
62.....	323	659,500	16,340.80	22	38,500	
63.....	324	674,000	14,984.60	12	27,000	
64.....	309	649,500	14,972.48	22	52,000	
65.....	302	660,500	15,340.76	15	31,000	
66.....	305	662,500	15,990.32	15	26,500	
67.....	229	508,500	11,783.84	12	16,000	
68.....	211	466,000	12,123.44	19	40,000	
69.....	174	399,500	11,074.16	10	20,000	
70.....	165	355,500	9,170.08	16	39,000	
71.....	137	288,000	7,793.44	13	30,000	
72.....	132	294,000	7,152.64	12	28,000	708
73.....	107	239,000	6,014.16	13	32,000	
74.....	95	220,000	5,904.36	11	27,000	
75.....	90	202,500	5,586.84	12	25,000	
76.....	78	177,000	5,151.00	10	21,000	
77.....	77	166,000	5,079.48	10	19,000	
78.....	51	112,000	3,555.12	9	21,000	
79.....	45	98,000	3,297.48	12	27,000	
80 and over...	66	134,000	5,042.95	20	39,000	
Totals....	8,784	\$16,996,500	\$494,957.08	426	\$880,000	
Fourth Class Mortuary Fund Dec. 31, 1910.....						\$541,766.98

709 SCHEDULE OF FOURTH CLASS MEMBERSHIP, AMOUNT
OF INSURANCE, MORTUARY RECEIPTS, NUMBER
OF DEATHS AND LOSSES INCURRED AT
ATTAINED AGE DURING YEAR 1911.

	Attained age.	Number of members.	Amount of insurance.	Mortuary receipts during year.	Number deaths during year.	Death losses incurred during year.
	21.....	.....	.....	.....	.....	.....
	22.....	.....	.....	.....	.....	.....
	23.....	.....	.....	.....	.....	.....
	24.....	.....	.....	.....	.....	.....
710	25.....	.....	.....	.....	.....	.....
	26.....	.....	.....	.....	.....	.....
	27.....	1	\$1,186	\$11.40	.....	.....
	28.....	1	500	65.13	.....	.....
	29.....	4	5,000	95.90	.....	.....
	30.....	4	6,500	128.31	.....	.....
	31.....	5	7,000	142.10	.....	.....
	32.....	8	10,444	208.70	.....	.....
	33.....	10	14,067	300.02	1	\$166.66
	34.....	3	3,000	261.20	.....	.....
	35.....	8	9,218	222.56	1	1,250
711	36.....	13	17,000	390.04	.....	.....
	37.....	4	8,000	423.69	.....	.....
	38.....	8	16,000	524.25	.....	.....
	39.....	21	33,500	862.92	1	3,000
	40.....	16	25,000	625.94	1	1,000
	41.....	19	27,401	929.04	1	1,000
	42.....	21	26,061	1,033.20	2	5,000
	43.....	33	47,520	2,378.51	.....	.....
	44.....	22	32,442	2,074.72	1	1,000
	45.....	34	50,925	2,723.26	1	1,000
	46.....	34	69,500	3,256.34	.....	.....
	47.....	29	51,000	2,750.03	1	1,000
	48.....	46	79,366	4,808.87	2	6,000
712	49.....	36	62,031	4,558.86	1	1,000
	50.....	39	72,404	4,794.26	1	2,000
	51.....	46	79,502	4,760.87	1	2,000
	52.....	39	68,484	4,000.04	1	2,000
	53.....	46	85,751	4,786.82	2	3,000
	54.....	55	93,024	5,238.29	4	10,000
	55.....	58	101,107	5,746.53	3	6,000
	56.....	53	88,481	5,507.43	2	8,000
	57.....	59	104,605	6,683.89	2	4,000
	58.....	68	125,885	7,228.02	4	9,000
	59.....	59	125,829	8,264.78	4	8,000
	60.....	77	144,777	9,588.32	4	7,500

Walter O. Powers.

61.....	75	133,130	10,979.49	4	6,000	713
62.....	97	183,125	12,455.99	7	10,000	
63.....	119	220,383	14,176.60	4	6,000	
64.....	127	226,544	15,603.55	2	5,000	
65.....	110	204,190	14,000.32	5	8,000	
66.....	103	184,603	13,366.29	11	27,433	714
67.....	94	150,411	11,829.50	9	14,000	
68.....	84	136,185	10,000.08	4	6,524	
69.....	70	117,109	9,603.01	14	32,000	
70.....	67	126,623	10,264.15	9	21,000	
71.....	50	90,064	9,525.60	6	10,125	715
72.....	36	68,394	7,637.76	5	8,218	
73.....	32	55,079	6,567.00	9	24,000	
74.....	29	48,503	6,152.74	8	15,211	
75.....	27	36,686	4,995.00	4	9,000	
76.....	26	39,326	5,740.40	1	2,000	716
77.....	27	30,811	4,757.88	3	4,216	
78.....	13	19,946	3,198.78	4	4,400	
79.....	17	26,530	3,798.72	4	3,600	
80.....	14	18,800	3,491.69	4	9,000	
81.....	12	14,630	3,974.58	1	1,000	715
82.....	3	4,500	986.04	.....	.....
83.....	1	3,000	725.49	1	1,000	
84.....	.....	.....	.....	.....	.....
85.....	.....	.....	.....	.....	.....
86.....	1	1,000	313.20	1	2,000	716
Totals..	2,213	\$3,831,982	\$279,518.10	161	\$312,643.66	
Fourth Class Mortuary Fund, December 31, 1911....						\$506,834.64

Question. Can you give the following data with reference to the Fourth Class on August 31, 1910, viz., the attained age, the number of members, the amount of insurance of the Fourth Class on August 31, 1910, together with the amount of mortuary fund on hand at that time. 716

Answer. I can.

Question. What is that data?

Answer. It is as follows:

Walter O. Powers.

717 11,322 members\$21,529,000.00 Insurance

FOURTH CLASS.

MEMBERSHIP AND INSURANCE BY ATTAINED AGE.

August 31, 1910.

	Attained			Attained		
	age.	No.	Amount.	age.	No.	Amount.
	25	4	\$6,000	55	316	\$610,000
	26	16	22,500	56	328	644,500
	27	23	33,000	57	352	680,500
	28	44	61,500	58	340	689,000
	29	31	36,500	59	367	706,000
718	30	53	68,000	60	378	749,500
	31	56	68,000	61	426	839,500
	32	66	79,500	62	412	835,000
	33	56	74,500	63	404	820,000
	34	89	115,500	64	381	782,500
	35	79	99,500	65	366	784,500
	36	85	120,500	66	372	794,500
	37	114	168,500	67	289	628,000
	38	128	177,000	68	278	665,000
	39	140	199,000	69	219	486,500
	40	161	228,500	70	205	438,500
719	41	164	244,500	71	175	358,000
	42	169	259,500	72	166	362,000
	43	187	309,500	73	137	298,500
	44	252	421,000	74	125	286,000
	45	229	405,500	75	112	253,500
	46	251	428,000	76	96	218,000
	47	229	410,000	77	97	210,000
	48	263	477,500	78	67	145,000
	49	310	564,000	79	64	137,000
	50	309	587,000	80	40	85,000
	51	304	568,500	81	25	53,000
	52	302	545,500	82	14	23,000
720	53	309	582,500	83	9	15,000
	54	329	613,500	84	3	5,000
				85	5	10,000
				86	0	0,000
				87	2	2,000
Total.				11,322		\$21,529,000

On August 31, 1910, Fourth Class Mortuary Fund
was \$675,800.85.

Question. Please give the amount of Fourth Class Mortuary Fund on hand at the end of each calendar month, commencing with August 31, 1910, and extending down to and including the month of December, 1911. 721

Answer.

FOURTH CLASS MORTUARY FUND.

Aug. 31, 1910.....	\$675,800 85	
Sept. 30, "	653,422 62	722
Oct. 31, "	615,568 49	
Nov. 30, "	558,606 99	
Dec. 31, "	541,766 98	
Jan. 31, 1911.....	516,486 16	
Feb. 28, "	462,499 16	
Mar. 31, "	461,644 92	
Apr. 30, "	443,272 31	
May 31, "	415,753 54	
June 30, "	450,916 31	723
July 31, "	460,114 98	
Aug. 31, "	469,787 46	
Sept. 30, "	480,267 51	
Oct. 31, "	488,764 67	
Nov. 30, "	489,016 63	
Dec. 31, "	506,834 64	

Question. Have you in your possession the records showing the amount of contributions paid by the plaintiff, Arthur V. H. Smyth, from the time he became a member of the Endowment Rank in 1889 and extending down to and including the month of December, 1910? 724

Answer. I have.

Question. Please state what those contributions were.

725 Answer. The contributions by years were as follows:

Arthur V. H. Smyth.

\$3,000.

	Year.		Amt. Paid.
	1889	2 mo. (\$3.00)	\$6.00
	1890	12 " "	36.00
	1891	12 " "	36.00
	1892	12 " "	36.00
726	1892	1 special	3.00
	1893	12 mo. (\$3.00)	36.00
	1894	2 " "	6.00
	1894	10 " (\$3.15)	31.50
	1895	12 " "	37.80
	1896	12 " "	37.80
	1897	12 " "	37.80
	1898	12 " "	37.80
	1899	12 " "	37.80
727	1900	12 " "	37.80
	1901	1 special May	3.15
	1901	8 mo. (\$3.15)	25.20
	1901	4 " (\$4.80)	19.20
	1902	12 " "	57.60
	1903	12 " "	57.60
	1904	12 " "	57.60
	1905	12 " "	57.60
	1906	12 " "	57.60
728	1907	12 " "	57.60
	1908	12 " "	57.60
	1909	12 " "	57.60
	1909	2 special "	9.60

Walter O. Powers.

1910	12 mo.	"	57.60	729
1910	3 special	"	14.40	
Total Amount Paid			\$1,007.25	
Less 15% for expenses			151.08	
Net Mortuary Contributions			\$856.17	
53 months	at	\$3.00	\$159.00	
91	"	" 3.15	286.65	730
117	"	" 4.80	561.60	
Total			\$1,007.25	

Question. How much of such contributions were included in the expense loading from year to year up to and including the year 1910?

Answer. Fifteen per cent.

Question. After deducting the expense loading, 731 what was the net amount contributed by the plaintiff to the mortuary fund of the Fourth Class?

Answer. \$856.17.

Question. What percentage of the contributions made by Fourth Class members since the new rates became effective January 1, 1911, have been deducted for expense purposes?

Answer. It was 5.78 per cent.

Question. Of the 5.78 per cent. taken for expense 732 purposes, how much, if any, was paid to Section Secretaries for collecting and remitting the monthly payments to the Home Office of the Insurance Department?

Answer. Five per cent.

Question. Has there been any sum of money transferred from the general expense fund of the Insurance Department to the Mortuary Fund of the Fourth Class since January 1, 1911?

733 Answer. There has.

Question. Please state what amount has been transferred.

Answer. \$38,294.42.

Question. In addition to the regular monthly payments, were extra assessments levied by the Board of Control at any time after 1889. If so, state how many and when such extra assessments were made.

734 Answer. The first extra assessment was levied in July 15, 1892. The second in May, 1901, the third February, 1909, the fourth September, 1909, and three in the year 1910 for the months of March, May and July, the amount of each special assessment being the amount of one regular monthly payment.

735 Question. Have you in your possession and custody as Secretary of the Insurance Department the journal and minutes of the Supreme Lodge showing the adoption of the constitution and by-laws for the government of the Insurance Department now in force?

Answer. I have.

Counsel now hands to the Notary Defendant's Exhibit "C" and asks to have it so marked.

Question. (Handing to witness Defendant's Exhibit "C," Counsel now asks) Please state, Mr. Powers, if you know, what defendant's Exhibit "C" is.

736 Answer. Defendant's Exhibit "C" contains a true, correct and complete copy and exhibit of the constitution and by-laws of the Supreme Lodge Knights of Pythias for the government of its Insurance Department, in force January 1, 1911, and all of the constitution and by-laws for the government of the Insurance Department in force from and after that date. .

Question. I will ask you to state, Mr. Powers, if you

Walter O. Powers.

have examined a copy of plaintiff's Exhibit "D," 737
headed:

"IMPORTANT { The Only
Pythian Insurance.

ENDOWMENT RANK

KNIGHTS OF PYTHIAS OF THE WORLD.

(Established 1877.)

INCORPORATED BY THE SUPREME LODGE."

738

Answer. I have.

Question. When, if you know, was plaintiff's Exhibit "D" published and sent out, if it ever was published and sent out, by the Supreme Lodge Knights of Pythias or by the Board of Control?

Answer. In the year 1894.

WALTER O. POWERS.

739

CIRCUIT COURT OF THE UNITED STATES,

NORTHERN DISTRICT OF NEW YORK.

ARTHUR V. H. SMYTH,

Plaintiff,

vs.

SUPREME LODGE KNIGHTS OF

PYTHIAS OF THE WORLD.

Defendant.

In Equity, No.

740

Jurat.

I, GEORGE L. DENNY, a Notary Public and special examiner by consent of counsel, do hereby certify that the foregoing testimony was taken before me in behalf of the defendants in the above entitled action at the office

of Supreme Lodge Knights of Pythias of the World,
 Room No. 902 Pythian Building, Indianapolis, Indi-
 741 ana, on the 10th day of May, 1912, and finished on the
 31st day of May, 1912.

That the witness, Walter O. Powers, was by me duly
 sworn before the commencement of his testimony; that
 the testimony of said witness was written out in the
 presence of the respective witness and of the counsel
 for the defendant, and that the testimony of the said
 witness was read over by him and signed by him.

742 That defendant's counsel was present throughout the
 taking of said testimony; that I am not connected by
 blood or marriage to either of the parties, or interested
 directly or indirectly in the matter in controversy.

In witness whereof I have hereunto set my hand and
 affixed my seal of office this 31st day of May, 1912.

GEORGE L. DENNY,

[L. S.] Notary Public in and for Marion County,
 Indiana, and Special Examiner.

743 My commission expires
 May 1, 1913.

Endorsed: Defendant's testimony, filed June 3, 1912.
 W. S. Doolittle, Clerk.

UNITED STATES DISTRICT COURT.

NORTHERN DISTRICT OF NEW YORK.

745

ARTHUR V. H. SMYTH,
Plaintiff,

vs.

SUPREME LODGE KNIGHTS OF
PYTHIAS,
Defendant.

NORTHERN DISTRICT OF NEW YORK, STATE OF NEW YORK, CITY AND COUNTY OF ALBANY, ss.: 746

John J. McCall, being duly sworn, says that he is the solicitor for the defendant in the above-entitled action; that heretofore and on the 6th day of May, 1912, he mailed a copy of the annexed notice to Robert J. Sanson, Esq., of 67 East Main street, in the city of Amsterdam, N. Y., by enclosing said letter in an envelope directed to said Robert J. Sanson, Esq., at such address and depositing said letter so directed in the post office at Albany, with sufficient prepaid postage thereon as required by law to send said letter as a registered letter and did request a return receipt for said letter and that on the 8th day of May, 1912, there was returned to your deponent as and for the return receipt for the delivery by mail of said notice, the enclosed card which bears the signature of Robert J. Sanson, the attorney for plaintiff, acknowledging the receipt of such registered letter containing such notice. 747 748

JOHN J. MCCALL.

Sworn to before me this 31st
day of May, 1912.

JOHN F. BRADY,

Com. of Deeds,
Albany, N. Y.

187

CIRCUIT COURT OF THE UNITED STATES.

NORTHERN DISTRICT OF NEW YORK.

749

ARTHUR V. H. SMYTH,
Plaintiff,

vs.

SUPREME LODGE KNIGHTS OF
PYTHIAS OF THE WORLD,
Defendant.

750

TO ROBERT J. SANSON, Esq., Solicitor for Com-
plainant.

SIR:

751

PLEASE TAKE NOTICE that on Wednesday, May 15th, 1912, at two-thirty o'clock in the afternoon of that day, at the office of William R. Grossman, Room 901, of Building, No. 115 Broadway, in the city of New York, N. Y., I shall proceed to take evidence on behalf of the defendant pursuant to the Sixty-seventh Rule in Equity, as amended, before Otho S. Bowling, Notary Public, and I shall produce at such time and place the following witness, namely, F. Herbert Wolfe, of the city of New York. You are invited to attend and cross-examine.

Dated, Albany, N. Y., May 6th, 1912.

JOHN J. McCALL,

752

Solicitor for Defendant.

25 North Pearl Street, Albany, N. Y.

Post Office Department
Official Business
—

Penalty for Private use to
avoid payment of Postage,
\$300. 753

Original Reg. No.

40097.
: Amsterdam :
: May 7 :
: 6-PM :
: 1912 :
: N. Y. :
.....

754

Return to:

JOHN J. McCALL,
25 No. Pearl St.,
Albany, New York.

REGISTRY RETURN RECEIPT. Form 1548.

Received from the postmaster registered article, the
original number of which appears on the reverse side
of this card. 755

Date of Delivery May 7, 1912.

(Sgd.) ROBERT J. SANSON.

S. Herbert Wolfe.

757 UNITED STATES DISTRICT COURT.
NORTHERN DISTRICT OF NEW YORK.

758	<div style="display: flex; justify-content: space-between;"> <div style="text-align: center;"> ARTHUR V. H. SMYTH, Plaintiff, <i>against</i> SUPREME LODGE KNIGHTS OF PYTHIAS, Defendant. </div> <div style="font-size: 4em; line-height: 1; padding: 0 10px;">}</div> <div style="text-align: center;"> In Equity, No. — </div> </div>
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Deposition of S. HERBERT WOLFE, taken at the office of William Grossman, Room 901, No. 115 Broadway, in the City of New York, before Otho S. Bowling, Notary Public, on the 15th day of May, 1912, at 2:30 o'clock, pursuant to notice heretofore given.

Appearances:

759 JOHN J. MCCALL, Esq., Attorney for Defendant.
 GERALD B. ROSENHEIM, Esq., of Counsel.
 J. P. GOODRICH, Esq., General Counsel.
 No appearance on behalf of plaintiff.
 S. HERBERT WOLFE, Esq., the witness.

S. HERBERT WOLFE, having first been duly sworn by Otho S. Bowling, the notary public designated in the Notice of Hearing, testified as follows:

760 BY MR. ROSENHEIM:

Q. Please state your name, age, residence and occupation.

A. My name is S. H. Wolfe; my age is thirty-eight; I live in the borough of Manhattan, city of New York, and State of New York, and I am by occupation an actuary.

Q. Please state how long you have been an actuary, where you were educated, whether or not you

are the author of any books on insurance, and if so, 761
what books, and for what insurance companies, if any,
you are actuary, and please state for what insurance
commissioners, if any, you have acted as consulting
actuary.

A. I have been engaged in actuarial work for
about eighteen years. I was educated in the public
schools of Baltimore and New York, and the College of
the City of New York. I am the author of "Inheritance
Tax Calculations," "Modified Premiums and Costs," 762
"The Examination of Insurance Companies" and the
compiler of "Investment-Directory-Insurance Compa-
nies." I have done actuarial or examining work for a
number of Insurance Departments, among others,
Maine, New Hampshire, Massachusetts, Rhode Island,
Connecticut, New York, New Jersey, Maryland, Vir-
ginia, North Carolina, Georgia, Texas, Tennessee, Ken-
tucky, Ohio, Michigan, Minnesota, Nebraska, Colorado
and California. 763

Q. Are you a member of the Order of Knights of
Pythias?

A. I am not a member of the Order of Knights
of Pythias.

Q. Please state whether or not you have acted
as a consulting actuary for Endowment Rank and In-
surance Department of the Supreme Lodge Knights of
Pythias.

A. Yes. 764

Q. Please state how long you have been connected in
such capacity with such Insurance Department or En-
dowment Rank.

A. Since 1905.

Q. Please state the nature of your employment and
the character of the duties you were called upon to
discharge therein.

765 A. My first work was the investigation of the Insurance Department's condition; the formulation of rates intending to correct existing evils; the valuation of its certificates in order to determine whether the remedy suggested was efficacious, the annual accounting prescribed by its laws, the determination of the number of assessments which could safely be waived, and, in short, all actuarial matters which have arisen since 1905 to the present time.

766 Q. Please state whether or not in the course of your connection with the Insurance Department or Endowment Rank of Supreme Lodge Knights of Pythias you became acquainted and are now acquainted with the history of the name and the history of the fourth and fifth classes of said Insurance Department, and the history of the first, second, fourth and fifth of said classes, the outstanding liabilities of said fourth class at the date of the Convention of the Supreme Lodge in August, 1910, and the outstanding insurance of said fourth class at said time, and the rates of assessment levied at said times upon the respective members of each of said classes.

A. I did and I am.

768 Q. Please state in what manner you acquainted yourself with the matters referred to in the last preceding question, and if you state that you did refer to any of the books, records, documents or papers of the Supreme Lodge Knights of Pythias, please specify in detail of what these books, papers, documents and records consisted.

A. My knowledge of the history and condition of the Insurance Department of the Knights of Pythias was obtained from an inspection and examination of the records which I examined upon frequent visits to the Home Office of the Order in Chicago and Indianapolis.

I examined all of these books and records which refer 769
to the membership of the Order, payments which have
been made by the members, the books of record pertain-
ing to the history of the Insurance Department, the
books and records pertaining to the funds, and their ac-
cumulations, and, in short, all of the books and records
necessary for me to reach the conclusion set forth in my
various reports to the Supreme Lodge, and in my an-
swers. The books, papers and records to which I have 770
just referred set forth, among other things, the number
of members and their attained age, the amount of out-
standing insurance, the number of deaths during each
particular year and the amount of death losses incurred
during each year, and the amount of contributions re-
ceived by way of assessment from the members, and each
and all of these facts I took into account in formulating
my opinion.

Q. Please state whether or not you have been 771
consulted by the officers of the Insurance Department
as an actuary as to the reasonableness of the rates of as-
sessment levied upon members of said Insurance De-
partment belonging to the fourth class and the fifth
class.

A. I have.

Q. Mr. Wolfe, the plaintiff in this action claims 772
that the re-rating by the Supreme Lodge at its Con-
vention in 1910 as to the plaintiff in this action and
as to the members of the fourth class, and the amount of
the rates established and fixed by the Supreme Lodge in
1910, was a violation of the contract of insurance of
certificate of membership in the Insurance Department
or Endowment Rank of the plaintiff. Now, will you
please state, Mr. Wolfe, whether or not you are acquaint-
ed with the history of the fourth class of the Insurance
Department of the Knights of Pythias, the rates paid

773 by the members of said class, the amount of the mortuary fund of said class from January 1st, 1910, to the date of the meeting of the Supreme Lodge, the amount of outstanding liabilities of said class at the date of the Convention of the said class, and the amount of the mortuary fund in August, 1910, and the rates of assessment levied upon the members of the fourth class prior to and at said time?

A. I am.

774 Q. Please state whether or not you were consulted as an actuary as to the necessity, reasonableness and fairness of the rates fixed by the legislation of the Supreme Lodge at said date or at its Convention in August, 1910, upon members of the fourth class, and as to the necessity and adoption of the laws passed by the Supreme Lodge at said Convention.

A. I was.

775 Q. Please state whether or not in your opinion as an actuary, taking into consideration all of the facts and circumstances known to you and with which you are familiar, as a result of your examination of the records of the Order, it was necessary for the Supreme Lodge at its Convention in 1910, to adopt the laws that were adopted by said Supreme Lodge, to re-rate the membership of the fourth class as they were re-rated, and state in full and in detail your reasons for the opinion expressed by you.

776 A. In my opinion as an actuary, it was necessary for the Supreme Lodge, at its Convention in 1910, to adopt the laws that were there adopted, whereby the assessments paid by the members of the fourth class were changed. My reason for holding this opinion is that the assessments paid by the members in the fourth class were insufficient to enable the Insurance Department to

continue to pay to the beneficiaries the amounts of the certificates as the certificates matured as death claims. 777

Q. In adopting the rates of assessment that were adopted by the Supreme Lodge at said convention it fixed the rate upon plaintiff and upon all members of the fourth class at their attained ages on January 1, 1911, provided they did not transfer to the fifth class or accept one of the options offered to them by said legislation, instead of their ages at entrance. Now state, Mr. Wolfe, taking into consideration all of the facts and circumstances known to you or with which you became acquainted by your examination of the records of the Order, and taking into consideration the facts above inquired about, state whether or not in your opinion as an actuary such action of the Supreme Lodge was necessary, and the rates adopted necessary, reasonable and fair, and state your reasons for your opinion. 778

A. In my opinion, the action taken by the Supreme Lodge at its convention in 1910 was not only reasonable and fair, but was absolutely necessary to enable the beneficiaries to receive the amounts of the certificates when they became due. This conclusion is based upon my careful study of the assessments then being paid by the members of the fourth class, the mortality experienced by said fourth class and the deficiency in the funds which the fourth class would have had in its mortuary fund if the rates would not have been increased. 779

Q. At the date of the convention of the Supreme Lodge and at the date of the adoption of the laws complained of by plaintiff at said Convention, state, if you can, what was the amount of the outstanding liabilities upon certificates issued and held by members of the fourth class; state the number of said members of the fourth class at said time, giving, as near as you can, 780

781 their ages, and state, if you can, the amount of the mortuary fund of said fourth class at said date.

A. I have kept track of the progress of the fourth class and the fifth class, month by month, since 1908, and at the end of 1909 made a valuation of the outstanding insurance in the fourth class. I found that the amount of outstanding certificates issued and held by members of the fourth class at the end of 1909 was \$24,539,000, and that the fourth class should have had in
782 its mortuary fund at that time over \$7,000,000 if the assessments were to be continued without any increase in the future. I am unable to state the number of members of the fourth class, as in the determination of the value of the certificates the amount of the insurance and not the number of members is the pertinent factor, but the number of members and their attained ages can be easily and authoritatively determined from the exhibit
783 filed by the Insurance Department Knights of Pythias with the Superintendent of Insurance of the State of New York, said information being set forth at length in the sworn reports. The amount of the mortuary fund in the fourth class at the end of June, 1910, was \$723,050, and at the end of July, 1910, was \$700,930.

Q. Taking into consideration the amount of the outstanding liabilities upon the certificates issued upon said fourth class, the amount of the mortuary fund on hand
784 at the date said laws were enacted by the Supreme Lodge, the number of members of said fourth class and their respective ages at said time, the amount of assessments that could be collected in the future on the old rates, as to the fourth class, the increase or decrease of said mortuary fund of the fourth class, if any, during the preceding year, and the condition of said mortuary fund of said fourth class prior to and at the date of the Convention of the Supreme Lodge, and taking into con-

sideration the probable deaths that would occur by reason of the ages of the members of the fourth class in the future and the length of time they probably would live, and taking into consideration all of the facts and circumstances which you ascertained by your examination of the records of the Order with respect to the condition, rates of assessment, mortuary fund, outstanding liabilities and other facts and circumstances pertaining to said fourth class membership of the Insurance Department, please state whether or not, in your opinion, the action adopted by the Supreme Lodge in re-rating said fourth class membership at said Convention in August, 1910, was reasonable or unreasonable, necessary or unnecessary, fair and just to the members of said fourth class, or unfair and unjust to them, and state clearly and in detail your reasons for your opinion. 785 786

A. After taking into consideration the factors set forth in your question, I am of the opinion that the action taken by the Supreme Lodge in increasing the assessments in the fourth class was reasonable, absolutely necessary and equitable to the members of said fourth class. I reached that conclusion after a careful study of the conditions surrounding the fourth class, whereby it was developed that the rates had never been correctly computed for various reasons, were insufficient to continue the payment of death claims as they matured in the future, and that action similar to that taken by the Supreme Body was absolutely necessary if the Insurance Department was to be continued. The application of the increase was equitable, and made with absolute fairness as between the members of the fourth class. 787 788

Q. Mr. Wolfe, please begin at the beginning of your connection with the Insurance Department of the Supreme Lodge Knights of Pythias, and state in detail your opinion, and the reasons therefor, as to the neces-

- 789 sity, reasonableness and fairness and justness of the re-
rating and the laws adopted by the Supreme Lodge at its
Convention in 1910, in reference to the membership of
the fourth class of the Insurance Department, giving
clearly and in detail the facts connected with said fourth
class. Please be particular in answer to this question
and explain in detail, as far as you can, whether or not
the rates paid by members of the fourth class prior to
the adoption of the laws referred to in the questions
790 which have hereinbefore been put to you and which you
have hereinbefore answered, were sufficient in your
opinion to justify the hope of paying the outstanding
liabilities of said class, and then give your conclusions
and opinion as to the necessity, reasonableness and fair-
ness of the legislation adopted by the Supreme Lodge,
giving the reasons for your opinion.

- A. One of my first acts when I was consulted in
1906 was to carefully examine the early history of the
791 Insurance Department, in order that I might deter-
mine the adequacy of the rates then being charged. I
found that the Insurance Department, Knights of
Pythias, in common with practically all assessment and
fraternal organizations, was started by men unfamiliar
with the science of life insurance, and who failed to
take into account the fact that the cost of furnishing
insurance protection did not remain stationary, but in-
creased as the members became older. I found that
792 the first change was made in 1884, a wrong principle
having been adopted for determining the ages of the
members and therefore the rates charged were again
inadequate. It became necessary, therefore, in 1901
to again make a change, but at that time three serious
blunders were made, all of them resulting in the levy-
ing of assessments upon too low a scale. These mis-
takes may be classified as follows:

First. The rates were based upon a table of mortality (the National Fraternal Congress table), which was inadequate, did not represent the mortality of the Knights of Pythias, and was never intended to serve as a basis for the readjustment of rates. 793

Second. In re-rating the members they were taken as of their ages at entry instead of at their ages at the time of the re-rating, no reserve fund having been accumulated to take care of this difference in age.

Third. No allowance was made for the expense of the organization, said expense being defrayed by a percentage of the assessments collected, which assessments were inadequate for mortuary purposes alone. 794

These were the conditions which confronted the Board of Control in 1906, and as a result of the investigation which I made at that time, I had no hesitancy in pointing out the early disintegration of the Insurance Department which was bound to occur if the rates were not changed. At my suggestion adequate rates were adopted (the fifth class being established for that purpose) and into this class every member was given the opportunity of entering without medical re-examination. Realizing that the primary object of a fraternal certificate is to pay to the beneficiary a certain amount of money when the wage earner is no longer here, the rates were made sufficiently high to provide for every contingency, and each certificate contained a requirement that at the end of each calendar year there should be an accounting; if the amounts collected for mortuary purposes were more than sufficient to provide for the current death claims and the deficiency of assessments in the future, the balance was to be distributed in the form of waived assessments. This adjustment worked admirably, for each year since 1907, up to 1911, two monthly assessments have been for- 795 796

797 borne, with the exception of 1909, when the mortality experiences justified the waiving of only one assessment. I have no hesitancy in stating that if the fifth class had not been established, the fourth class would have been unable to keep up as long as it has done. Notwithstanding the levying of additional assessments, the amount in said mortuary fund at the end of each month since December, 1908, being shown in the following table:

798	December	31, 1908.....	\$1,274,474
	January	31, 1909.....	1,217,012
	February	28, 1909.....	1,189,247
	March	31, 1909.....	1,176,096
	April	30, 1909.....	1,143,010
	May	31, 1909.....	1,061,929
	June	30, 1909.....	1,037,186
	July	31, 1909.....	1,003,178
799	August	31, 1909.....	992,329
	September	30, 1909.....	982,106
	October	31, 1909.....	967,790
	November	30, 1909.....	939,279
	December	31, 1909.....	872,876
	January	31, 1910.....	848,063
	February	28, 1910.....	823,769
	March	31, 1910.....	807,995
	April	30, 1910.....	819,810
800	May	31, 1910.....	756,981
	June	30, 1910.....	723,030
	July	31, 1910.....	700,930

Every one familiar with the subject of insurance will recognize that as a member becomes older, the amount which the Insurance Department ought to have on hand to protect his contract becomes larger; instead of the mortuary fund being a diminishing quality,

therefore, it should have increased from month to 801
to month and the fact that it has decreased so markedly
(after making due allowance for the decrease in insur-
ance), shows the necessity for the action taken by the
Supreme body at its meeting in 1910. I have no hesi-
tancy in stating that the rates paid by the members of
the fourth class prior to the adoption of the regula-
tions in July, 1910, were insufficient to justify the
hope that the older members would receive the insur-
ance protection when they needed it most, and were 802
unable to obtain insurance from other organizations.
As a matter of equality and justice, therefore, it be-
comes absolutely necessary to devise some plan whereby
each certificate would become absolutely safe.

Q. You have already testified that if the system of
assessments which have been in force in the Endow-
ment Rank and Insurance Department of the Supreme
Lodge, Knights of Pythias, had been continued it 803
would have been ineffectual to raise an amount suf-
ficient to pay the death claims, will you please tell me
the various methods by which this defect in the method
of operation could have been cured?

A. The attempt to furnish insurance at less than
cost has naturally resulted in failure and various at-
tempts have been made to remedy the defect in the
plans under which fraternal societies have been op-
erated. The attempt to correct the inadequacy of the
rates may be made in either one of two ways: First, 804
additional assessments may be levied; or second, the
rates charged in the future may be made adequate.

Q. As an actuary, will you please state what has
been your experience with reference to the advantage
secured by the adoption of one of these methods over
the other, and state your reasons?

- 805 A. The levying of additional assessments has already proved unsatisfactory. Theoretically, a fraternal organization can always get enough funds to pay its death claims by levying additional assessments, if necessary. In actual practice, this rapidly brings about a disintegration of the organization, as the members in good health refuse to meet the extra assessment, drop their certificates and leave behind a mass of moribund risks, the mortality upon which rapidly rises to the point
806 where nobody is willing to pay an adequate rate. In reality, therefore, the only safe and sane method to correct the evils which result from charging inadequate rates is to charge a sufficient sum in the future to enable the beneficiaries of every deceased member to receive the face value of the insured's certificate. In no other way can absolute justice be done each member.
- Q. I will ask you to state, Mr. Wolfe, whether or not the Supreme Lodge, Knights of Pythias, undertook to
807 increase its rating by the levying of extra assessments at any time since 1907?

A. It has.

Q. Please state when, and the number of them.

A. Two extra assessments were levied in 1909 and three extra assessments were levied in 1910.

Q. What effect did that have, if any, on the lapse ratio on the members of the fourth class in good standing in the year 1910?

- 808 A. It caused an abnormal and undue number of lapses, with the result that the mortality increased for the reasons set forth in my previous answer.

Q. I will ask you to state, from your examination of the books and records, what, in your opinion, would have been the effect on the membership of the fourth class of the Insurance Department, Supreme Lodge, Knights of Pythias, had they undertaken to meet their

liabilities by the levying of extra assessments instead 809
of re-rating their members, as was done in 1910?

A. It would have been most disastrous to the Insurance Department of the order. The good risks would have lapsed and the poor risks which would have been left behind, would have caused the mortality to rise to such an extent as to wreck the institution.

Q. Basing your answer upon the results of your examination of the books, papers and documents of the order, which you have previously stated you did 810
examine, please state whether or not in your opinion the defects and inadequacies which have developed in the method of the operation of the Insurance Department in the order could have been remedied by the adoption of any method other than that which was adopted in the Convention of the order held in August, 1910?

A. I am of the opinion that in no other way could the fourth class of the Insurance Department of the 811
order have been saved.

Q. Is it your opinion, based upon the same data, that the method of assessment which was adopted in the Convention of August, 1910, was absolutely required as a condition of the continued existence of the fourth class of the Insurance Department of the order?

A. It is.

Q. Assuming that no increase in the rates of assessments levied upon the members of the fourth class of the Insurance Department of this order had been made in August, 1910, how long, in your opinion, would the fourth class of the Insurance Department of this order 812
been able to continue in operation?

A. It is quite evident from the figures which I found from my investigation and which have been embodied in one of my previous answers, that the mortuary fund

- 813 of the fourth class was steadily decreasing. On December 31st, 1908, the fund amounted to \$1,274,474. At the end of July, 1909, it had decreased to \$1,003,178. A year later, namely, at the end of July, 1910, the fund had decreased to \$700,930. I have every reason to believe that the rate of decrease would have been larger thereafter. In fact, five months after that time, December 31st, 1910, the fourth class mortuary fund amounted to only \$541,766. This indicates
- 814 unmistakably that the fourth class could not have lasted more than two or three years after August, 1910, if the re-rating had not been put into effect.

Q. Down to what time has your examination of the Insurance Department with reference to the fourth class continued?

A. Down to the present time.

- Q. From your examination of the books and records of the Order and your knowledge of the same and of the
- 815 experience of the fourth class under the rates adopted in August, 1910, I will ask you to state whether, in your opinion, any less rate could have been adopted with safety than was adopted in August, 1910?

A. I am of the opinion that no lower rate could safely have been adopted.

- Q. I will ask you to state, Mr. Wolfe, assuming that the plaintiff, Arthur V. H. Smyth, was admitted to the Insurance Department on the 7th day of November,
- 816 1889, at the age of thirty-seven years, and that he paid two monthly assessments of \$3 each in 1889; 12 monthly assessments in the years 1890, 1891 and 1892, amounting to \$3 each; one special assessment in 1892, amounting to \$3; 12 monthly assessments in 1893, amounting to \$3 each; 2 monthly assessments in 1894, amounting to \$3 each; in 1894, 10 monthly assessments at \$3.15 each; in 1895, 1896, 1897, 1898, 1899 and 1900, 12

monthly assessments each year of \$3.15 each; 9 monthly assessments of \$3.15 each in 1901; 4 monthly assessments of \$4.80 each in 1901; 12 monthly assessments of \$4.80 each in 1902, 1903, 1904, 1905, 1906, 1907, 1908 and 1909; 2 special assessments of \$4.80 each in 1909; 13 monthly assessments of \$4.80 each in 1910, and 3 special assessments of \$4.80 each in 1910. Upon these assumptions, please state the total amount paid by the plaintiff for mortuary purposes and for expenses, and also what the actual cost to the Endowment Rank of the Insurance Department of the Order of Knights of Pythias was for carrying this protection for the plaintiff? 817 818

A. The plaintiff paid \$856.17 for mortuary purposes and \$151.08 for expense purposes. The cost of furnishing the protection to him was \$877.34, showing that he did not contribute enough to pay for his insurance.

Q. Please explain what you mean by the cost of insurance. 819

A. In any calendar year a certain number of members of the Order will die. The cost of paying the face value of their certificates when divided up equitably among all of the members of the Order constitutes the cost of insurance.

Q. In answer to one of the questions, you stated that these serious blunders were made in 1901, when re-rating became necessary, one of the blunders being that in re-rating the members they were taken as of their ages at entrance, instead of at their ages at the time of the re-rating, no reserve fund having been accumulated to take care of this difference in age. Please state, Mr. Wolfe, whether this resulted in any discrimination as between members of the same age and expectation of life. 820

A. Yes.

S. Herbert Wolfe.

821 Q. Please state whether or not there would be such discrimination resulting between the case of the plaintiff and one who entered the Order at the time of the re-rating in 1901.

A. The plaintiff at the time of the re-rating in 1901 paid his assessments for age 37, although in reality he was at that time aged 49. A member entering in 1901, who was born at the same time as the plaintiff, would be compelled to pay the assessments at age 49, instead of

822 37.

Q. Please state, Mr. Wolfe, whether or not you are familiar with the rules and regulations in regard to the age at which applications for insurance would be taken as risks by the ordinary insurance company.

A. I am.

Q. Please state from your own knowledge what the rules or regulations prevailing among the ordinary insurance companies are in this respect.

823

A. I know that insurance companies have accepted, without question, risks up to the age of sixty.

S. HERBERT WOLFE.

Subscribed and sworn to before me
this 20th day of May, 1912.

OTHO S. BOWLING,

(Seal) Notary Public, Kings County, New York.
Certificate filed in New York County, N. Y.

UNITED STATES CIRCUIT COURT,
NORTHERN DISTRICT OF NEW YORK.

825

ARTHUR V. H. SMYTH,
Plaintiff,

vs.

SUPREME LODGE K NIGHTS OF
PYTHIAS,
Defendant.

In Equity, No.

SOUTHERN DISTRICT OF NEW YORK, COUNTY OF NEW YORK, STATE OF NEW YORK: 826

I, Otho S. Bowling, a Notary Public and Special Examiner by consent of counsel, hereby certify that the foregoing testimony was taken before me on behalf of the defendant in the above entitled action at the office of William R. Grossman, Esq., 115 Broadway, New York, N. Y., commencing on the 15th day of May, 1912, at two-thirty o'clock and finishing the same day; that the said witness S. Herbert Wolfe was offered as a witness as the person described in the notice to take testimony as F. Herbert Wolfe, was by me duly sworn before the commencement of his testimony. That the testimony of said witness was written out in the presence of the respective witness and of the counsel for defendant and that the testimony of the several witnesses were read over by them and signed by them, respectively. 827

The defendant's counsel was present throughout the taking of said testimony. The counsel for the plaintiff did not appear. 828

I further certify that I am not connected by blood or marriage to either of the parties or interested directly or indirectly in the matter in controversy.

In witness whereof I have hereunto set my hand and affixed my seal of office this 28th day of May, 1912.

[L. S.]

OTHO S. BOWLING.

Sworn to and subscribed before me
the 29th day of May, 1912.

829

[L. S.] ABNER B. STUPEL,
Notary Public, New York County.

Endorsed: Deposition of S. Herbert Wolfe (Defendant's Testimony), filed June 3, 1912. W. S. Doolittle, Clerk.

The foregoing statement of the evidence in the within cause is hereby approved. The clerk is directed to transmit the same as part of the record on appeal in the within cause.

830

Dated Syracuse, N. Y., September 23, 1913.

GEO. W. RAY,
U. S. District Judge, Northern District of New York.

DEFENDANT'S EXHIBIT "A."

831

CONSTITUTION
OF THE
ENDOWMENT RANK KNIGHTS OF PYTHIAS
OF THE WORLD
ALSO
GENERAL LAWS AND REGULATIONS.

Adopted by the Board of Control, July, 1888.

832

CONSTITUTION
OF
THE ENDOWMENT RANK
KNIGHTS OF PYTHIAS
OF THE WORLD.

ARTICLE I.

Powers of the Supreme Lodge.

Section 1. It possesses the power, in accordance with the laws of the Order, to establish the Endowment Rank.

833

Section 2. To provide, print and furnish all forms, ceremonies, warrants, certificates, blanks of all kinds, official seals, and such supplies for Sections of the Endowment Rank as may be necessary.

Section 3. To provide a revenue for the Endowment Rank from the sale of books, seals and blanks of all kinds which may be adopted for use.

834

Section 4. To grant warrants to members of the Order of Knights of Pythias, duly qualified, upon proper application, for the establishment of Sections of the Endowment Rank, and to enact laws and regulations, of general application, to establish and govern the same.

Section 5. To provide for, and define the duties of the officers of the Endowment Rank and the Sections thereof, and to prescribe such additional duties for the regular officers of the Supreme Lodge as may be necessary.

835

Section 6. To create, hold and disburse through a Board of Control, the funds of the Endowment Rank, under such regulations as it may deem necessary.

Section 7. To decide all appeals from the action of those in authority.

Section 8. To issue certificates through the Board of Control, and provide for the payment of the same, under the laws, rules and regulations embodied in this Constitution, in the sum of one thousand (\$1,000) dollars, two thousand dollars (\$2,000), or three thousand dollars (\$3,000), as may be applied for under the laws of the Endowment Rank.

836

ARTICLE II.

Formation of Sections.

- 837 Section 1. Sections of the Endowment Rank shall exist by virtue of warrants issued by the Board of Control, in substance as follows:

FORM OF WARRANT.

- Know ye, that the Board of Control of the Endowment Rank Knights of Pythias of the World, reposing a special trust and confidence in the following Knights, in good standing in their Lodges, and their successors,
- 838 viz:, doth hereby grant and issue this warrant of authority, to institute a Section of the Endowment Rank at, County of, State of, to be known and hailed as Section No., and the said Section No., after being duly and lawfully instituted, is hereby authorized and empowered to admit to membership into this Rank, duly qualified Knights in good standing in their
- 839 Lodges, according to the Laws of the Order, as promulgated from time to time by the Supreme Lodge and the Board of Control of the Endowment Rank.

And the said Section No., of the Endowment Rank, doth solemnly promise to conform to, and abide by the Laws of the Supreme Lodge, Knights of Pythias of the World, for the government of the Endowment Rank, and to obey its commands and enactment in all things.

- 840 In default thereof, this warrant of authority may be suspended or revoked by the Board of Control of the Endowment Rank, and all benefits and rights held by each individual member under and by virtue of this warrant, and his Endowment Certificate shall be forfeited.

Signed, sealed and attested by the President of the Board of Control and the Supreme Secretary.

Dated

Section 2. Petitions for Sections of the Endowment Rank must be made in the form provided by the Board of Control, in substance as follows: 841

FORM OF PETITION FOR SECTIONS.

*To the Board of Control of the Endowment Rank
Knights of Pythias of the World:*

Sirs and Brothers: The undersigned Knights of Pythias in good standing, respectfully apply for a warrant to institute a Section of the Endowment Rank of the Knights of Pythias, under the jurisdiction of the Supreme Lodge Knights of Pythias of the World, and to be located at, County of, and State of, subject to the conditions of the laws, rules and regulations of the Endowment Rank now in force, or which may hereafter be enacted. Dated at, this day of, 188.... 842

Name.	Amount of	
Signature	Age.	Residence. Endowm't Lodge of
in full.		(\$1,000, \$2,000 which a 843
		or \$3,000.) member.

Said petition shall contain the signatures of not less than five (5) Knights in good standing, not over fifty years of age, and shall be accompanied by a fee of five dollars (\$5.00) for the warrant and supplies; and said amount shall be placed to the credit of the Endowment Fund.

Each applicant, after entering his name upon the petition, must make a regular application upon a form provided for by the Board of Control, and be examined in accordance with the published "Rules for Medical Examiners," by a physician selected by the Board of Control of the Endowment Rank, who shall prepare and sign the certificate attached to the application; said application and medical examiner's certificate shall be of the form furnished by the Board of Control of the Ea- 844

845 downment Rank, which shall contain the following declaration and agreement, to be subscribed to by the applicant :

DECLARATION AND AGREEMENT.

I declare that I am not now a member of the Endowment Rank Knights of Pythias, and have not been rejected as an applicant thereof. I declare, furthermore, that all of the above statements are true to the best of my knowledge and belief, and that I have not concealed or omitted to state anything regarding my health, past or present, affecting the expectancy of my life ; and that

846 I hereby consent and agree that any untrue statement made in this application, or to the Medical Examiner or any concealment of facts touching my health or expectancy of life, or for failure or neglect to pay any or all assessments and dues as prescribed by the laws of the Rank or Order, or for other causes, or voluntarily severing my connection with the Order, shall work a forfeiture to all my rights, and the rights of my heirs and beneficiaries, to all benefits and privileges accruing

847 to members of this Rank.

I hereby agree that I will punctually pay all dues and assessments for which I may become liable, and that I will be governed, and this contract shall be controlled, by all the laws, rules and regulations of the Order governing this Rank, now in force, or that may hereafter be enacted by the Supreme Lodge Knights of Pythias of the World, or submit to the penalties therein contained. To all of which I willingly and freely subscribe.

848 Dated at this the day of, 188....

.....
Signed, Member of
Lodge No., Knights of Pythias.
..... of, State of

Section 3. Sections of the Endowment Rank shall not be instituted unless there be present not less than

five (5) applicants whose applications have been approved by the Medical Examiner-in-Chief.

Section 4. When the membership of a Section is reduced to less than three (3) the Board of Control of the Endowment Rank, upon the request of the remaining members, or any of them, may issue to them Clearance Cards, countersigned by the Supreme Secretary, subject to the requirements of the Constitution, when the holder's name shall be retained on the books of the Supreme Secretary, to whom all assessments shall be paid during the life of the Card. 849

Said Card shall be in substance as follows: 850

FORM OF CLEARANCE CARD.

This is to certify, that Brother was duly admitted a member of Section No. of the Endowment Rank, located at, Jurisdiction of, on the day of, 188...., P. P., and has paid all assessments and other claims against him to this date, and is under no charge whatever. 851

We do hereby grant to said Brother this Clearance Card, and recommend his admission into any Section of the Endowment Rank, within twelve months from the date hereof, and no longer, upon his presenting evidence that he is a member of a Subordinate Lodge of Knights of Pythias in good standing and that he is not indebted for any assessments or dues.

Such Card may be deposited at any time within twelve months from its date, with the Secretary of any Section, and the name of the holder shall thereupon be entered on the roll of membership in said Section. But if such Card be not so deposited within the period above specified, then his membership shall continue in the Section granting the Card, and the Card become null and void. 852

Section 5. Each Section of the Endowment Rank shall have an official seal of uniform design, and num-

bered to correspond with the number of the Section, which seal shall be furnished by the Supreme Secretary, and shall be affixed to all official documents.

ARTICLE III.

Membership.

An applicant for admission to membership in the Endowment Rank must be a Knight of Pythias in good standing, not over fifty (50) years of age, be recommended by some competent practicing physician appointed by the Board of Control of the Endowment Rank, and be examined in accordance with the published "Rules for Medical Examiners," on the form provided by said Board of Control, which must be approved by the Medical Examiner-in-Chief, and the necessary fees paid before he can take the obligation admitting him to membership.

Section 2. All present members of the First, Second and Third Classes of the Endowment Rank in good standing in the Rank, may be admitted to the Fourth Class by complying with the requirements of Section 1 of this Article, and the surrender of the Endowment Certificate or Certificates held in said First, Second or Third Classes.

In these cases the limitation as to age, shall not apply.

Section 3. When a brother shall have forfeited his membership, by reason of the non-payment of assessments or dues, and it shall be made to appear to the satisfaction of the Board of Control, that such forfeiture was without intentional fault on the part of said brother, said Board shall have power to re-admit him at his former rating, upon his passing a satisfactory medical examination, in accordance with the rules governing the examination of new members.

Provided, That, if such forfeiture for non-payment of assessments or dues, has continued for a period of thirty days after notice of such forfeiture has been re-

ceived at office of Supreme Secretary, then upon re-admission, the brother shall be rated at his age, at the date of such readmission. In such case, the limitation as to age shall not apply. 857

Section 4. Membership in the Endowment Rank shall begin with the date the obligation is taken by the applicant, and shall be rated as of age at nearest birthday to date of obligation.

The first assessment shall be paid for the month in which the obligation is taken.

Section 5. The Supreme Lodge through the Board of Control of the Endowment Rank, shall issue, or cause to be issued, to all members of the Rank who are entitled thereto, a Certificate of Membership in substance as follows: 858

FOURTH CLASS.

No. \$.....

Certificate of Membership, Endowment Rank of the Order of Knights of Pythias of the World.

This certifies that Brother 859
received the obligation of the Endowment Rank of the Order of Knights of Pythias of the World, in Section No., on, 188...., and is a member in good standing in said Rank. And in consideration of the representations and declarations made in his application, bearing date, 188...., which application is made a part of this contract, and the payment of the prescribed admission fee; and in consideration of the payment hereafter to said 860
Endowment Rank of all assessments and dues as required, and the full compliance with all the laws governing this Rank now in force, or that may hereafter be enacted by the Supreme Lodge Knights of Pythias of the World, and shall be in good standing under said laws, the sum of Dollars will be paid by the Board of Control of the Endowment Rank, Knights of Pythias of the World, to

....., as directed by said Brother in his application, or to such other person or persons as
 861 he may subsequently direct, by change of beneficiary entered upon the records of the Supreme Secretary of the Endowment Rank; upon due notice and proof of death, and good standing in the Rank at the time of death, and surrender of this certificate.

Provided, however, That if at the time of the death of said Brother, the proceeds of one assessment on all the members of the Endowment Rank shall not be sufficient to pay in full the maximum amount of endowment held under this certificate, then there shall be paid
 862 an amount, less ten per cent, for expense, equal to the proceeds of one full assessment on all remaining members of the Endowment Rank, and the payment of such sum to the beneficiary or beneficiaries mentioned herein, shall be in full of all claims and demands under and by virtue of this certificate .

Issued this day of, 188..., P. P.
 863, at, and registered in Book, Folio

In witness whereof, we have hereunto subscribed our names and affixed the seal of Supreme Lodge Knights of Pythias of the World.

.....
 President Board of Control Endowment Rank.

Attest:

864
 Supreme Secretary.

I hereby accept this Certificate of Membership subject to all the conditions herein contained.

Dated
 Attest:

.....
 (Seal)
 Secretary of Section No.

ARTICLE IV.

Monthly Assessments and Forfeiture of Certificate of Endowment. 865

Section 1. Each member of the Endowment Rank shall, on presenting himself for obligation, pay to the Secretary of the Section, in accordance with his age and the amount of endowment applied for, a monthly assessment, as provided in the following table, and shall continue to pay the same amount each month thereafter, as long as he remains a member of the Endowment Rank; *unless otherwise provided for by the Supreme* 866
Lodge Knights of Pythias of the World.

TABLE OF MONTHLY PAYMENTS.

Age.	Amount. \$1,000	Amount. \$2,000	Amount. \$3,000	
21	\$ 70	\$1 40	\$2 10	
22	70	1 40	2 10	
23	70	1 40	2 10	
24	70	1 40	2 10	867
25	75	1 50	2 25	
26	75	1 50	2 25	
27	80	1 60	2 40	
28	80	1 60	2 40	
29	80	1 60	2 40	
30	80	1 60	2 40	
31	85	1 70	2 55	
32	90	1 80	2 70	
33	90	1 80	2 70	868
34	95	1 90	2 85	
35	95	1 90	2 85	
36	1 00	2 00	3 00	
37	1 00	2 00	3 00	
38	1 05	2 10	3 15	
39	1 10	2 20	3 30	
40	1 10	2 20	3 30	
41	1 15	2 30	3 45	

	Age.	Amount. \$1,000	Amount. \$2,000	Amount. \$3,000
869	42	1 20	2 40	3 60
	43	1 25	2 50	3 75
	44	1 30	2 60	3 90
	45	1 35	2 70	4 05
	46	1 40	2 80	4 20
	47	1 45	2 90	4 35
	48	1 50	3 00	4 50
	49	1 55	3 10	4 65
	50	1 60	3 20	4 80

- 870 Section 2. If at the time of the death of a member of the Endowment Rank, the proceeds of one assessment upon all members of said Rank, shall not be sufficient to pay in full the maximum amount of endowment held under the certificate of said deceased member, then there shall be paid to the beneficiary an amount equal to the proceeds of one full assessment made upon all the remaining members of said Endowment Rank, less ten per cent, for expenses, and the
- 871 payment of such sum to the beneficiary shall be in full of all claims and demands under and by virtue of said certificate.

- Section 3. Monthly assessments of members holding certificates of Endowment in the Fourth Class shall be due and payable to the Secretary of the Section without notice, on the first day of each and every month; and a failure to make such payment on or before the tenth
- 872 day of each month shall cause, from and after such date, a forfeiture of the certificate of endowment and all right, title and interest in such member or his beneficiaries may have in and to the same, and membership shall cease absolutely.

Section 4. The Secretary of a Section shall forward to the Supreme Secretary the monthly assessment collected, immediately after the tenth day of each and every month.

If such monthly assessment is not received by the Supreme Secretary on or before the twenty-fifth day of the same month, demand shall be made by him on the President and Secretary of the Section for the amount of the same. 873

If the assessment for which demand has been made is not paid to the Supreme Secretary within thirty days after such demand has been made, the Section so failing to pay shall be suspended by the Board of Control of the Endowment Rank, upon report in writing of such failure being made to the said Board by the Supreme Secretary, and the entire membership of such Section shall individually stand suspended from membership in the Endowment Rank, and shall forfeit all right, title and interest in and to their Endowment Certificates. Provided, that a Section whose membership has forfeited their Endowment, and whose Warrant has been thereby suspended, shall regain all rights as a Section, and any members thereof, not less than five, shall regain full rights and privileges held previous to forfeiture, if within thirty days from suspension of Warrant said Section pay to the Supreme Secretary the amount of all assessments accrued upon said members. In case of the suspension of any Section of the Endowment Rank, for any cause, notice thereof shall be forthwith mailed to the several officers and members of such Section by the Supreme Secretary. 874 875

Section 5. Less than five members of a Section whose Warrant has been so suspended may, upon the payment to the Supreme Secretary within thirty days from the suspension of the Warrant of all accrued assessments due from them and fifty cents each for a Clearance Card, regain membership, and all rights and privileges attached thereto, whereupon Clearance Cards will be issued to them and such members shall be held subject to the requirements of Article II, Section 4 of this Constitution. 876

ARTICLE V.

Supplies.

877 Section 1. The supplies for the use of a new Section, consisting of the seal and all necessary books, blanks, etc., are furnished by the Supreme Secretary for the sum of five dollars (\$5.00).

All subsequent supplies required by Sections and the preliminary blanks for organization of Sections shall be furnished by the Supreme Secretary upon application, free of charge.

878 "Quarterly Statements" and "Annual Reports" shall be furnished to the officers of Sections free of charge.

ARTICLE VI.

Endowment Fund.

Section 1. The funds of the Endowment Rank shall be placed to the credit of the Endowment Fund, which shall be derived from all assessments; from the membership fees; certificate fees; clearance card fees; from the sale of supplies, and from all other sources of revenue.

879

Section 2. Said Fund shall be for the purpose of paying the legitimate death liability, in accordance with the laws, rules and regulations of the Endowment Rank, and for paying all necessary expenses of the Rank.

So much of said Endowment Fund as is not required to pay the current death liability, and current expenses of the Rank, shall at the end of the month or at such time as the Board of Control may direct, be invested

880 by said Board, in easy convertible interest bearing securities, such securities to be held in trust by the Depositary as hereinafter provided.

Section 3. Special assessments may be made upon all members of the Endowment Rank, by the Board of Control, when necessary to meet the liabilities of the Rank.

Said special assessments shall be governed by the same laws, rules and regulations as are set forth for the payment and collection of the regular Monthly Assessments, except that said Special Assessments shall be issued on the 15th day of the month, and shall be due and payable by the members to the Secretary of the Section, within thirty (30) days thereafter, who shall forward the same to the Supreme Secretary at once. 881

ARTICLE VII.

Duties of Supreme Officers.

Supreme Chancellor.

Section 1. The Supreme Chancellor shall have general supervision and shall be ex-officio a member of the Board of Control of the Endowment Rank. 882

He shall have power in case of the death, resignation, or total inability of any member of the Board of Control of the Endowment Rank, or the Supreme Secretary, to perform their duties, to appoint a member of the Supreme Lodge, who shall also be a member of the Endowment Rank, to fill the vacancy or vacancies as the case may be, requiring a good and sufficient bond in the sum fixed by the Supreme Lodge for said officers. 883

ARTICLE VIII.

Board of Control and Endowment Rank Depositary.

Section 1. There is hereby created a Board of Control of the Endowment Rank of the Knights of Pythias of the World, which shall consist of the Supreme Chancellor ex-officio, and three members of the Supreme Lodge, who shall be members of the Endowment Rank. 884

Section 2. The Board of Control shall be composed of the Supreme Chancellor ex-officio and three members of the Supreme Lodge, who shall be members of the Endowment Rank, and shall be elected by the Supreme Lodge as follows: One for the term of six years, one for the term of four years, and one for the term of two years, and at each biennial session of the Supreme

Lodge one member of said Board shall be elected for a full term of six years. The Supreme Secretary shall be
 885 Secretary of the Board; in case of the death, resignation or removal of any or either of the members, the Supreme Chancellor is hereby authorized to fill such vacancies by appointment. The member or members so appointed by the Supreme Chancellor shall serve until the first session of the Supreme Lodge held after such appointment or appointments were made.

Powers of the Board.

886 Section 3. All powers now vested by existing laws in the Board of Control, Finance Committee, Supreme Chancellor, Supreme Keeper of Records and Seal, Supreme Master of Exchequer, and Supreme Secretary are hereby transferred to the Board of Control of the Endowment Rank.

Section 4. The Board shall within thirty days after their election, meet and organize, by electing one of their members President, who shall perform the duties
 887 hereinafter provided.

Section 5. The Board shall have entire charge and full control of the Endowment Rank, subject to such restrictions as the Supreme Lodge may, from time to time, provide. They shall hear and determine all appeals; and their findings shall be final unless reversed by the Supreme Lodge in session. They are hereby authorized to annul any certificates of endowment when, upon investigation, they find that such certificate has
 888 been procured by misrepresentation.

Section 6. The Board shall meet for the purpose of examining into the affairs of the Endowment Rank once every three months, viz: January, April, July and October of each year; said meetings to be held at the office of the Supreme Secretary, on such dates of the respective months as may be designated by the President of the Board. Special meetings may be called by the President at his pleasure or by the Supreme Secretary, on

request of not less than two members of the Board, should the interest of the Rank require it.

Section 7. The Board shall, as soon as practicable 889
after their organization, designate and appoint a solvent and responsible bank as the depositary of the funds of the Endowment Rank. It shall be the duty of the Board to request proposals from the various banks of the city in which the office of the Supreme Secretary of the Endowment Rank is located, and the one offering the highest rate of interest on daily balances, shall be designated by the Board as the depositary of the Endowment Fund, provided said bank so offering the 890
highest rate of interest can and does furnish a good and sufficient bond, in such an amount as the Board may deem necessary to protect the funds against loss. If, however, a greater rate of interest can be obtained, and the funds equally well secured, from banks in cities other than the one in which the office of the Supreme Secretary is located, and the Board deem that course advisable in the interest of the Rank, they are hereby 891
authorized to make such selection.

Section 8. It shall be the duty of the Board within a reasonable time after their election, to locate the office of the Supreme Secretary, and secure necessary rooms with suitable vaults for the convenience of the office.

Section 9. The Board is hereby authorized to enact general laws, rules and regulations in conformity with this Constitution, for the government of Sections and the membership of the Endowment Rank, and alter and 892
amend such general laws, rules and regulations, when in their judgment the needs of the Rank require such action.

Section 10. The Board shall require the Supreme Secretary to make quarterly reports to the Sections of the Endowment Rank, giving the financial condition, and such other information as they may deem necessary. Four copies of said report to be sent to each

Section, and one copy to each of the Supreme Lodge officers.

- 893 Section 11. The Board shall prepare and submit a full and complete report of their acts and decisions, and the condition of the Endowment Rank, to the Supreme Lodge at their regular sessions, and at other times if required so to do by the Supreme Chancellor.

Section 12. The Board shall at their regular meetings, as provided in Section 6, audit the books and accounts of the Supreme Secretary and Depositary of the Endowment Fund.

- 894 Section 13. The Board shall have supervision of the issuance of all documents connected with the details of the work of the Rank, and authorize their President to sign officially such as require his signature. The Board shall have power in times of epidemic to prohibit the admission of members into Sections located in infected localities.

- 895 Section 14. The Board shall require the Supreme Secretary to deposit daily with the depositary of the funds of the Rank all moneys received by him on account of the Endowment Rank. It shall be his duty to issue and attest all warrants drawn on the depositary for the disbursement of the funds of the Endowment Rank. It is hereby made the duty of the President of the Board of Control to sign all warrants issued and attested by the Supreme Secretary for the purpose of liquidating the liabilities of the Rank in conformity with the laws governing the Endowment Rank.

- 896 Section 15. The Board shall have power to direct the investment of such parts of said Endowment Fund as they may deem wise and proper, when the amount in said Fund will justify; all investments shall be placed with the depositary of the Rank as the custodian of all funds.

Section 16. The Board shall keep a full and complete record of the proceedings and acts of their meet-

ings, and all questions shall be decided by a majority vote of the Board.

Section 17. The Board are hereby empowered and 897 directed to re-rate the members transferred from the First, Second and Third Classes under resolutions passed by the Supreme Lodge at the session of 1884 permitting such members to enter the Fourth Class at the age they were when becoming members of the First, Second and Third Classes. The Board is instructed to re-rate this Class of membership so as to require them to hereafter pay as of their age when becoming members of the Fourth Class, said re-rating to take effect 898 at such date as the Board shall prescribe, on and after the 1st day of August, 1888; and the *Board is further empowered to re-rate the present tables of the Fourth Class, applying it to all members, should such action become necessary for the proper protection and perpetuity of the Rank.*

Section 18. It shall be the duty of the depositary of the Endowment Rank to receive from the Supreme Secretary all moneys for said Rank, and shall credit 899 the same to the account of the Rank, and shall pay all warrants drawn on said depositary for the purpose of liquidating liabilities of the Endowment Rank, if there be a sufficient amount of money in the depositary to the credit of the Rank; said warrants to be signed by the President of the Board of Control and attested by the Supreme Secretary.

Said depositary shall make quarterly reports to the Board of Control showing the condition of the Endow- 900 ment Rank Fund, and shall at any time, when asked so to do by the Board of Control or the Supreme Chancellor Knights of Pythias of the World give such information as may be requested relating to the funds of the Endowment Rank in its possession.

Said depositary shall, before entering upon the discharge of its duties, enter into and acknowledge a good and sufficient bond in such an amount as the Board of

Control may require, conditioned for the faithful discharge of its duties in connection with the Endowment Rank. The sureties on said bond to be not less than five.

901 Provided, that no surety shall be accepted on such bond who is surety on any other bond relating to any other fund of the Supreme Lodge; and in the event of the death of one or more of its bondsmen, said depository shall immediately notify the Board of Control of the Endowment Rank, who shall require a new bond with sufficient bondsmen. Said bond so required of
902 said depository shall be taken in the name of the Supreme Lodge Knights of Pythias of the World, and approved as to form and surety by the Board of Control of the Endowment Rank.

Provided further, that the bond required of the depository of the Endowment Rank shall not be for a less amount than \$100,000 and subject to be increased from time to time by direction of the Board of Control in such amounts as said Board may deem advisable for
903 the proper protection of the Endowment Rank.

Section 19. It shall be the duty of the Board to attend the Supreme Lodge sessions, and they shall be privileged to take part in all discussions affecting the Endowment Rank matters. For their services they shall receive the same compensation as Supreme Representatives are now paid, \$4 per day, for all time necessarily spent in attendance upon sessions of the Board and the Supreme Lodge, and in traveling to and
904 from the places of meeting, and shall be paid mileage at the rate of four cents per mile, computed by the nearest route to and from their place of residence.

ARTICLE IX.

Supreme Secretary Endowment Rank.

Section 1. The Supreme Secretary of the Endowment Rank shall prepare and attest all warrants for Sections of the Endowment Rank, issued by order of

the Board of Control of the Endowment Rank and shall keep a register thereof.

He shall keep the following official records: 905

A register of the membership of the Endowment Rank;

A register of the membership by Sections;

A register of duplicate certificates issued;

A register of all applications rejected by the Medical Examiner-in-Chief.

A register of deaths.

He shall receive all money due the Endowment Rank, and shall deposit same daily with the Endowment Rank depositary and shall issue and attest all orders drawn on said depositary for the disbursement of the funds of the Endowment Rank. He shall keep the financial books of the office in such manner as will show each transaction clearly and distinctly. 906

He shall submit quarterly to the Board of Control, a full and complete report of the business of his office, and his books shall always be open for the inspection of the Board or any member thereof. 907

He shall be a member of the Supreme Lodge and of the Endowment Rank, and shall be elected at the time, in the manner, and for the period prescribed for Supreme Lodge officers.

For use in his official correspondence, he shall be authorized to adopt a seal with appropriate design emblematic of the Endowment Rank, to be approved by the Board of Control.

He shall receive such compensation, payable out of the Endowment Fund of the Rank, as the Supreme Lodge may from time to time determine. 908

Before entering upon the discharge of his duties, he shall enter into, and acknowledge a bond in the penalty of fifty thousand dollars, payable to the Supreme Lodge Knights of Pythias of the World, with not less than five sureties; said bond to be approved by the Board of Control, and conditioned for the faithful dis-

charge of his official duties as Supreme Secretary of the Endowment Rank, and in the event of the death of
 909 one or more of his bondsmen, he shall immediately notify the Board of Control, who shall require a new bond with sufficient bondsmen.

ARTICLE X.

Medical Examiner-in-Chief.

Section 1. The Medical Examiner-in-Chief shall be a member of the Endowment Rank; he shall be appointed by the Board of Control of the Endowment
 910 Rank, and shall serve until the close of the current biennial term, unless otherwise ordered by the Board of Control.

He shall examine all applications for membership, under such rules and regulations as the Board of Control may from time to time adopt; and if not disqualified under such rules and regulations, nor from any other cause, approve the same.

He shall forward all rejected applications to the Supreme Secretary to be registered and filed. He shall
 911 keep a complete register of all applications passed upon by him, together with his final action, which shall at all times be subject to the inspection of the Board of Control.

For his services he shall receive fifty (50) cents for each application passed upon, to be paid by the applicant.

He shall submit to the Board of Control, at their
 912 regular meetings in January, April, July and October, a report stating the number of applications passed upon, whether approved or rejected, together with such information and recommendations as he may deem necessary.

ARTICLE XI.

Resignations, Suspensions from Lodge, Appeals, Etc.

Section 1. A member may at any time resign his membership in the Endowment Rank, by notifying the

Secretary of his Section in writing, and surrendering to him his certificate of membership, provided there are no charges against him, financial or otherwise. 913
Such resignation shall cause a forfeiture of all amounts paid into, and all claims upon the funds of the Endowment Rank.

Section 2. Whenever a member of the Endowment Rank withdraws from his Lodge, or whenever his membership therein ceases, from any cause other than death, he thereby severs his connection with this Rank, and forfeits all his right, title and interest in and to the Endowment Fund; Provided, that a member who 914
takes a withdrawal card may retain his membership in the Section and his interest in the Endowment Fund for a period of twelve months by paying regularly all assessments. Upon the deposit of said card with another Lodge, he shall at once notify the Secretary of his Section, and shall forward to the Supreme Secretary a certificate from the Master of Finance of the Lodge in which said card is deposited; and provided further, that if a Lodge becomes defunct, and a member 915
thereof, or a member holding a withdrawal card, by reason of age or disability is unable to connect himself with a Subordinate Lodge, he shall not lose his membership in the Section nor his interest in the Endowment Fund, so long as he shall regularly pay the assessments required by law.

Section 3. If a member of a Section is suspended from his Lodge, and an appeal is taken from the action of the Lodge, such action stands in full force until reversed by the Grand or Supreme Lodge, and membership in the Endowment Rank ceases at the time of such suspension. Should the action of the Subordinate Lodge be reversed by higher authority during the life of the member, such action shall reinstate him as a member of the Section in good standing, provided he pay all assessments made during such suspension and the pending of said appeal. 916

ARTICLE XII.

Beneficiaries, Lost Certificates, Etc.

- 917 Section 1. Each applicant for membership and each applicant for readmission in the Endowment Rank shall designate in his application some person or persons, related to or dependent upon him for support, as hereinafter provided, to whom the benefit shall be paid when due; and the name or names and the relationship of the person or persons so designated shall be inserted in the Endowment Certificate, except in case
- 918 when the Endowment is made payable to "wife and children," the names of the children may be omitted, and in the event of such member's death, all surviving children of deceased shall be considered legal beneficiaries; Provided, that an applicant may name as beneficiary his betrothed, his Subordinate Lodge, his Endowment Rank Section or a Brother Knight. The interest of any person so designated, or their heirs, shall cease and determine in case of his or her death during the lifetime of such member. Upon the death
- 919 of a member of this Rank, the benefit, as specified in the Endowment Certificate, shall be paid by the Supreme Secretary by warrant on the Endowment Rank Depositary signed by the President of the Board of Control and attested by the Supreme Secretary, through the Secretary of the Section to the person or persons designated in said certificate as entitled thereto. In case of the death of such person or persons after said benefit shall have accrued, the same shall be paid to the legal representative of such person or persons. In case
- 920 of the death of the person or persons designated as entitled to such benefit before the same shall have accrued it shall be paid to the widow and children of the deceased member; and, if there be no widow nor children, nor any of them, it shall be paid to the father and mother, sisters and brothers, share and share alike; Provided, that the amount of said benefit shall be held sacred, a legacy to and for said legatees, and shall

never, under any circumstances, be liable for, nor be appropriated to the payment of any debt against the estate of said deceased member. If none of the persons herein designated as entitled to said benefit, be alive when the same shall accrue, then and in that case, the said benefit shall be paid to the lawful heirs of the deceased member, and if there be no such heirs the liability of the Endowment Rank Knights of Pythias of the World, by reason of said certificate, shall cease and determine. 921

The beneficiary or beneficiaries on receipt of the warrant or warrants on the Endowment Rank Depositary for the payment of the Endowment, shall receipt upon the back of the certificate of the deceased member, for the payment of said Endowment, which shall be attested by the Secretary of the Section, or in his absence by an officer duly authorized to take acknowledgments, and such certificates shall thereupon be surrendered and forwarded to the Supreme Secretary. 922

ARTICLE XIII.

Documents and Appeals.

Section 1. All documents from Sections relating to the Endowment Rank, requiring legislation by the Supreme Lodge, shall be forwarded, in duplicate under seal of the Section from which such appeal emanates, in time to reach the Supreme Keeper of Records and Seal at least thirty days prior to the session of that body; a copy thereof shall at the same time be sent to the Supreme Secretary. 923

ARTICLE XIV.

All the laws, forms and business details now governing the First, Second and Third Classes of the Endowment Rank shall be in full force and effect so long as membership in any one or all of these Classes exist, except as herein otherwise provided. 924

ARTICLE XV.

Amendments.

925

These laws may be altered or amended at any regular session of the Supreme Lodge Knights of Pythias of the World, by a two-thirds vote.

ARTICLE XVI.

Section 1. All acts or parts of acts inconsistent herewith, are hereby repealed.

926

GENERAL LAW, RULES AND REGULATIONS

FOR THE GOVERNMENT OF SECTIONS OF

THE ENDOWMENT RANK, KNIGHTS OF PYTHIAS OF
THE WORLD.

Adopted by the Board of Control of the Endowment Rank, Knights of Pythias of the World.

ARTICLE I.

927

Meetings, Quorums, Etc.

Section 1. Each Section shall be known as Section No. . . . , of the Endowment Rank Knights of Pythias of the World.

Section 2. Meetings for the transaction of official Section business shall be held at such time and place as may be fixed by the By-Laws.

A meeting shall also be held in December of each year for the election of a President, Vice-President and

928

Secretary, who shall constitute the officers of a Section, to serve for the ensuing year. At said meeting the Section shall also appoint some competent and reputable physician, who may or may not be a member of the Order, and shall report at once to the Supreme Secretary and Medical Examiner-in-Chief, the name of such physician so appointed. Such appointee shall act as Medical Examiner for the Section, and enter upon his duties as such Examiner at the time of his

appointment by the Section but shall be subject to removal at the pleasure of the Board of Control.

Provided, that in towns or cities when more than one Section exists, the Board of Control shall select one or more physicians from the list of names so sent to the Supreme Secretary, who shall thereafter perform the duties of Medical Examiner for all the Sections located in such towns or cities. 929

Special meetings of the Sections, when necessary, may be held upon the call of the President, or at the request of two members of the Section.

Section 3. Three members shall constitute a quorum. 930

In the absence of both President and Vice-President, any member may be called to preside.

ARTICLE II.

Application for Membership.

Section 1. Each application for membership of the prescribed form must be addressed to a Section of the Endowment Rank. It must be accompanied by a certificate from the Master of Finance of the Lodge to which the applicant belongs, that he is not in arrears for dues. The medical examination must be made within a period not greater than thirty days prior to the submission of the application to the Medical Examiner-in-Chief, and it is hereby made the duty of the local Medical Examiner to forward the application direct to the Medical Examiner-in-Chief within the period prescribed, accompanied by his fee of fifty cents, to be paid by the applicant. 931 932

A fee of one dollar for each one thousand dollars Endowment applied for, must be paid by the applicant to the Secretary of the Section.

When the application is returned approved, the President or any Section officer obligates the applicant, which must be done within thirty days after approval by the Medical Examiner-in-Chief, except in the for-

mation of new Sections. The Secretary certifies on the application to the date when such obligation has
 933 been taken, and forwards it to the Supreme Secretary, under the provisions of Article III of the Constitution.

Section 2. A member desiring to increase his Endowment from \$1,000 to \$2,000 or \$3,000, or from \$2,000 to \$3,000, must make application to the Section of which he is a member on a special blank provided for that purpose by the Supreme Secretary, and pay a fee of one dollar for each \$1,000 Endowment applied for; said application, together with fifty cents as his
 934 fee, to be paid by the member must be sent to the Medical Examiner-in-Chief for his action, who shall return it to the Secretary if approved. The Secretary shall forward said application and the original membership certificate attached, to the Supreme Secretary, who will issue a new certificate for the full amount of Endowment.

Such increase of Endowment shall require a monthly payment, to be graded in accordance with the age of
 935 the applicant at the time the application for increase was approved by the Medical Examiner-in-Chief, which shall be added to the monthly payment required under the original certificate.

Section 3. A member desiring to decrease his Endowment from \$3,000 to \$2,000 or \$1,000, or from \$2,000 to \$1,000, shall make application to the Section of which he is a member on a blank as provided by the Supreme Secretary, when the Secretary shall forward
 936 said application with the original membership certificate attached, and a fee of fifty cents to the Supreme Secretary, who shall issue a new certificate for the amount of Endowment desired.

The deduction in the monthly assessment to be made for the month succeeding the one in which the application was made.

ARTICLE III.

Officers and Their Duties.

Section 1. The officers of a Section shall be President, Vice-President and Secretary. 937

Section 2. The officers shall be elected annually at the stated meeting in December, and shall enter upon the discharge of their duties on the first day of January following, and shall continue in the discharge of their duties until their successors are qualified; Provided, however, that the Secretary shall first enter into bond as hereinafter provided. Any member in good standing shall be eligible to any office in the Section. 938

Section 3. The President shall preside at all meetings of the Section.

He shall see that the laws of the Endowment Rank are complied with by the officers and members of his Section.

Section 4. The Vice-President shall discharge all the duties of the President in case of his absence or disability, and perform any specific duties required of him by the laws of the Endowment Rank. 939

Section 5. The Secretary shall receive all applications for membership made out in proper form, and accompanied by the legal fees. Upon the return of said application by the Medical Examiner-in-Chief, approved, he shall at once inform the applicant, and the obligation shall be administered. When said applicant shall have taken the obligation as required by law, the Secretary shall certify the fact on the application and shall at once forward it, with the legal fees, to the Supreme Secretary. He shall keep a faithful record of the business of the Section transacted in the meeting or by the authorized officers during recess. The Secretary shall keep a financial account with each member of the Section, and in January and July of each year, he shall furnish to the Master of Finance of the Lodge or Lodges to which the members of the Section belong, a list of 940

the names of such members, and request said officer to note the financial standing of the members so reported
 941 and return to him said list with such notations.

He shall keep a record of the Postoffice address of each member, and any change thereof of which he has notice.

He shall use the books and blanks and receipts furnished by the Supreme Secretary, and perform all other duties required of him by the Constitution and Laws of the Endowment Rank.

Before entering on the discharge of his duties he shall
 942 enter and acknowledge a bond of the prescribed form, in such penalty as the Section may determine, payable to the President of the Section, with sureties by him deemed sufficient for the faithful discharge of his duties as Secretary.

Section 6. The Medical Examiner shall examine all applicants for membership in the Endowment Rank, in accordance with the prescribed form and "Rules for
 943 Medical Examiners," and forward the application to the Medical Examiner-in-Chief.

Section 7. In case of death, resignation, or removal of any officer, the Section shall immediately fill the vacancy by an election, such officer to serve during the unexpired term.

ARTICLE IV.

Beneficiaries, Lost Certificates, Etc.

Section 1. Each applicant for membership, and each
 944 applicant for readmission in the Endowment Rank shall designate in his application some person or persons related to or dependent upon him for support, or as provided in Article XIII, Section 1 of the Constitution.

The beneficiary or beneficiaries on receipt of the warrant or warrants on the Endowment Rank depository for the payment of the Endowment, shall receipt upon the back of the certificate of the deceased member, for the payment of said Endowment, which shall be attest-

ed by the Secretary of the Section, or in his absence by a notary public or some other officer duly authorized to take acknowledgments, and such certificate shall there-
upon be surrendered and forwarded to the Supreme Secretary. 945

Section 2. Any member desiring to change his beneficiary or beneficiaries shall make application on a form provided by the Supreme Secretary; the Secretary of the Section shall attest the same, and forward such application with the certificate originally issued and a fee of fifty cents to the Supreme Secretary, who shall, if the change be in accordance with law, as specified in Article XIII, Section 1 of the Constitution, make the proper record and issue a new certificate, containing the name or names of the substituted beneficiary or beneficiaries. 946

Section 3. A member whose certificate has been lost, or destroyed by fire or other cause, shall be entitled to a duplicate, by making an affidavit, stating fully the facts connected therewith, which shall be forwarded by the Secretary of the Section, with a fee of fifty cents, to the Supreme Secretary, who shall issue a duplicate certificate. 947

ARTICLE V.

Clearance Card.

Section 1. Any member of this Rank desiring to transfer his membership to another Section, shall be entitled to receive a Clearance Card by paying all assessments and charges appearing against him on the books of the Section. The Clearance Card is furnished by the Supreme Secretary to Sections, for twenty-five cents, and must be countersigned by the President and Secretary of the Section, certifying to the good standing of the holder, in the Endowment Rank. Said card shall be in substance as follows: 948

This is to certify that Brother
was duly admitted a member of Section No.,

of the Endowment Rank, located at
 Jurisdiction of, on the day of
 949, 18...., P. M., and
 holds Certificate No., Class, for
 \$....000.00. He is assessed at the age of,
 one monthly assessment being \$.....

He has paid all assessments and other claims against
 him to this date, and is under no charge whatever. At
 his request this Clearance Card is granted; upon appli-
 cation he shall be admitted into any Section of the En-
 dowment Rank within twelve months from the date
 950 hereof, and no longer, upon his presenting evidence that
 he is a member of a Subordinate Lodge, Knights of
 Pythias, in good standing, and that he is not indebted
 for any assessments.

Section 2. A Clearance Card from a Section shall
 be good for twelve months; the holder thereof shall pay
 his dues and assessments to the Secretary of the Section
 granting such Card until deposited in another Section.

If at the end of twelve months he has not deposited
 951 his Card in some other Section, his membership shall
 continue in the Section granting the Card, and the
 Clearance Card becomes null and void.

Section 3. When a Clearance Card is deposited in a
 Section, it must be accompanied by such fee as the Sec-
 tion may provide, and when a member is thus admitted
 to a Section, due notice thereof shall be sent to the Sec-
 retary of the Section granting such Card and to the Su-
 preme Secretary.

952 Section 4. When a Clearance Card is granted to a
 member, the Secretary of the Section granting the Card
 shall continue to collect from the member all assess-
 ments, until he receives notice that the Card is deposi-
 ted, when he shall at once notify the Supreme Secretary,
 giving the number of the Section in which it has been
 deposited, and stating the last assessment paid to him.

Section 5. When a Clearance Card is deposited in a Section, the Secretary of said Section shall require the member depositing the Card to produce his receipt for the last month's assessment, and immediately forward to the Supreme Secretary the Clearance Card, a notice of the date the Card was deposited, and the date the last monthly assessment was paid to the Section granting the Card. 953

ARTICLE VI.

Official Receipts for Assessments.

Section 1. All blank receipts for assessments paid to the Secretary of the Section by the members shall be furnished by the Supreme Secretary. 954

ARTICLE VII.

Proof of Death.

Section 1. The proof of death shall in all cases be made by the beneficiary or beneficiaries on a blank form, to be furnished by the Supreme Secretary, and shall contain an affidavit of the attending physician and the undertaker who officiated, and also an affidavit of the Master of Finance, as to the standing of the deceased in the Lodge at the time of his death, and affidavits from such other persons as may be required; all affidavits to be made before an officer authorized to take affidavits, and such authority must be certified to by the Clerk of a Court of record, or other competent authority, under seal. 955

All necessary legal papers, required in order to secure the proper payment of benefits, must also be furnished by the beneficiary or beneficiaries, and shall be forwarded with the proof of death to the Supreme Secretary, by the Secretary of the Section. 956

ARTICLE VIII.

Members in Arrears for Lodge Dues.

Section 1. When a member of the Endowment Rank becomes in arrears to his Lodge on account of dues for

- more than twelve months, he shall forfeit his membership in the Section and said Rank, and render void his
- 957 Endowment Certificate.

In case of such forfeiture he can again become a member of the Endowment Rank by making application in the form prescribed for new applicants, which must be accompanied by the forfeited certificate and the proper fees.

ARTICLE IX.

Section By-Laws.

- 958 Section 1. Each Section shall have the right to make By-Laws for its own government, not inconsistent with these laws; and may provide such revenue as may be necessary to cover the expenses (if any), of its meetings, etc. Neglect or refusal to pay as required in such By-Laws may subject the delinquent member to forfeiture of his membership in the Section and Rank and render void his Endowment Certificate; Provided, however, that no Section shall pass a law requiring that such
- 959 revenue for Section dues be paid by its members in advance.

In case of such forfeiture he can again become a member of the Endowment Rank by making application in the manner prescribed for new applicants, which must be accompanied by the forfeited certificate and the proper fees.

ARTICLE X.

Amendments.

- 960 *The provisions of these general laws may be altered or amended at any regular session of the Supreme Lodge of the Endowment Rank Knights of Pythias of the World.*

DEFENDANT'S EXHIBIT "B."

"MEMORANDUM.

961

Indianapolis, Ind., Sept. 21, 1910.

To the Members of the Insurance Department:

Attention is called to the amendments to the Supreme Statutes enacted at the Biennial Convention of the Supreme Lodge, held in Milwaukee, August 2nd to 11th, 1910.

The following pages include all legislation enacted affecting the Insurance Department. Please read the same carefully, in order that you may become thoroughly acquainted with the new laws. 962

BOARD OF CONTROL SUPREME LODGE KNIGHTS OF
PYTHIAS, INSURANCE DEPARTMENT,

UNION B. HUNT, President.

W. A. JENKINS, Secretary.

(The rest of Exhibit "B" consisted of a pamphlet containing copies of Sections 468, 390, 401, 464, 479, 490, 491, and 509, and no others of the Statutes and by-laws set out in full under the same section numbers in Defendant's Exhibit "C.") 963

DEFENDANT'S EXHIBIT "C."

965

LAWS
GOVERNING THE
INSURANCE DEPARTMENT
OF THE
SUPREME LODGE
KNIGHTS OF PYTHIAS

November Edition, 1910

966

P. P. XLVII
Form 173

LAWS
GOVERNING THE
INSURANCE DEPARTMENT
OF

967

THE SUPREME LODGE, KNIGHTS OF PYTHIAS

November Edition, 1910, P. P. XLVII

The Supreme Lodge Knights of Pythias has duly enacted and promulgated a Supreme Constitution and a code of Supreme Statutes. Division VII, Part I of the Supreme Statutes, edition of 1906, as amended in 1908 and in 1910, relates exclusively to the Insurance

968 Department.

In publishing the Insurance Department laws separate from the balance of the laws of the Order, and in pamphlet for use of the Insurance Department officers and members, there is included not only Division VII, Part I of said Supreme Statutes, but also certain other Supreme Statutes and certain parts of The Supreme Constitution which relate to the Insurance Department.

The Congress of the United States of America by Act approved May 5, 1870, authorized the incorporation in the District of Columbia, of societies, benevolent, educational, etc. 969

[16 U. S. Statutes at Large, 101 and 102.]

FROM THE SUPREME CONSTITUTION
OF THE
ORDER OF KNIGHTS OF PYTHIAS.

In effect October 22, 1906, P. P. XLIII. 970

PREAMBLE.

The Supreme Lodge Knights of Pythias, a corporation existing by virtue of the Act of Congress approved June 29, 1894, is the source of all authority in the Order of Knights of Pythias, and does hereby ordain and establish this Supreme Constitution.

ARTICLE II. 971

The Supreme Law.

The Supreme Constitution and the laws and rituals enacted by the Supreme Lodge in accordance therewith shall be the Supreme Law of the Order of Knights of Pythias.

ARTICLE III.

The Composition of the Order.

The Order of Knights of Pythias shall be a secret fraternal organization, composed of persons upon whom any rank of the Order shall have been legally conferred. 972

ARTICLE IV.

The Structure of the Order.

The Order shall be constituted as follows:

Par. A. The Supreme Government.

973 Par. B. Such Grand Lodges as possess warrants or charters legally granted, which have not been surrendered, suspended or revoked.

Par. C. Such Subordinate Lodges as possess warrants or charters legally granted, which have not been surrendered, suspended or revoked.

ARTICLE V.

The Ranks of the Order.

The ranks of the Order shall be the following and no others:

974 Par. A. The ranks of Knighthood, known as Page, Esquire and Knight, as established in the ritual of the Order for Subordinate Lodges.

Par. B. The Grand Lodge rank, which shall be attained only by a Past Chancellor in good standing, and in such manner as the Supreme Lodge may by law prescribe.

975 Par. C. The Supreme Lodge rank, which shall be attained only by a Past Grand Chancellor in good standing, and in such manner as the Supreme Lodge may by law prescribe.

ARTICLE VII.

The Supreme Government.

The Supreme Government shall consist of three co-ordinate departments, viz.: A Legislative Department, an Executive Department and a Judicial Department.

976

ARTICLE VIII.

The Legislative Department.

Section 1. The legislative power of the Supreme Government shall be vested in a Supreme Lodge. All such powers not herein delegated to Grand or Subordinate Lodges are hereby reserved to the Supreme Lodge.

Sec. 2. The Supreme Lodge shall be composed of:

Par. A. All the Past Supreme Chancellors in good standing in their respective Grand and Subordinate Lodges. 977

Par. B. Its officers, as designated in this Constitution.

Par. C. The Supreme Representatives legally elected or appointed.

Sec. 3. The officers of the Supreme Lodge shall be :

The Supreme Chancellor,

The Supreme Vice Chancellor,

The Supreme Prelate, 978

The Supreme Keeper of Records and Seal,

The Supreme Master of Exchequer,

The Supreme Master at Arms,

The Supreme Inner Guard,

The Supreme Outer Guard.

They shall be elected biennially as provided by law, and shall hold office for the term of two years, or until their successors shall have been duly elected and installed. They shall be Past Grand Chancellors who have received the Supreme Lodge rank and who are in good standing in their respective Grand and Subordinate Lodges ; provided, that the Supreme Chancellor must have attained the rank of Knight at least ten years prior to his election. 979

Sec. 4. Each Grand Domain shall be entitled to two Supreme Representatives, and to one additional Supreme Representative for each ten thousand members of the Subordinate Lodges within such Grand Domain on the thirty-first day of December immediately preceding the election or appointment of such Supreme Representative ; provided, that no Grand Domain shall be entitled to more than five Supreme Representatives. 980

ARTICLE XIII.

The Insurance Department.

- 981 The Insurance Department known as the Endowment Rank, established for the purpose of providing indemnity for the beneficiaries of deceased members of the Order, is a fraternal beneficiary society, and shall be governed by such laws as the Supreme Lodge may enact or authorize; provided, that the attainment of membership in such Insurance Department shall be restricted to members of the Order who have attained
- 982 the rank of Knight and are in good standing in a Subordinate Lodge, but shall not be compulsory upon any member of the Order.

FROM THE SUPREME STATUTES
OF THE
SUPREME LODGE KNIGHTS OF PYTHIAS.

DIVISION III.—Part 2.

CHAPTER IV.

The Rank of Knighthood.

- 983 196. An applicant for the ranks of Knighthood must possess the following qualifications, which shall be stated in his application:
- (a) He must be a white male.
 - (b) He must be of good moral character.
 - (c) He must be not less than twenty-one and not more than fifty years of age, except that a person more
- 984 than fifty years of age may become eligible by dispensation.
- (d) He must be a believer in a Supreme Being.
 - (e) He must be in good health and sound in mind and body, except that a maimed person may become eligible by dispensation.
 - (f) He must be able to read and write.

(g) He must not be a professional gambler, saloon-keeper, bar-tender, or dealer in spirituous, vinous or malt liquors.

985

(h) He must believe in the maintenance of order and the upholding of the constituted authority in the government in which he lives.

(i) He must not have been rejected by any Subordinate Lodge as an applicant for the ranks of Knighthood within the six months preceding his application.

197. Any person eligible under the provisions of the preceding section may make application for the ranks of Knighthood to any Subordinate Lodge within whose territorial jurisdiction he has his actual residence, provided that he shall have resided for the preceding six months within the State, District, Territory or Province in which such Subordinate Lodge is located.

986

CHAPTER VIII.

Good Standing.

237. A Page, Esquire or Knight shall be considered to be in good standing in the Subordinate Lodge of which he is a member:

987

(a) If he is not under suspension from membership.

(b) If he has not renounced the Order.

DIVISION VII.

Part 1.

INSURANCE DEPARTMENT.

Enacting Clause.

988

Be it enacted by the Supreme Lodge Knights of Pythias, that the following code of statutes, being Part I of Division VII, shall constitute and be known as the Supreme Statutes of the Order of Knights of Pythias governing the Insurance Department, and shall be designated and cited by the words "Supreme Statutes"; and as such are hereby adopted and shall become the Law of the Order, to take effect from and after the

adoption of this enacting clause, except such parts thereof as to which a different provision is made therein.

- 989 All laws of a general nature in force when the Supreme Statutes take effect, which are repugnant thereto, are hereby repealed, except as follows:

- 990 The adoption of the Supreme Statutes, and the repeal of existing laws therein provided for, shall not affect any offense or act committed or done, or any penalty or forfeiture incurred, or any right established, accrued or accruing, before the Supreme Statutes take effect; but when a penalty or forfeiture is mitigated by the Supreme Statutes, such provisions may be extended and applied to any conviction or judgment pronounced after said appeal; nor shall such repeal affect any prosecution or charges pending at the time it takes effect, for an offense committed under any of the provisions of a law repealed, except that the proceedings therein shall conform, as nearly as practicable, to the provisions of the Supreme Statutes.

- 991 When a period of time, prescribed in any law repealed, for acquiring a right or barring a remedy, or for any other purpose, has begun to run, and the same or a similar limitation is prescribed in the Supreme Statutes, the time of limitation shall continue to run, and shall have the like effect, as if the whole period had begun and ended under the operation of the Supreme Statutes.

Adopted October 24, 1906.

CHAPTER I.

- 992 *Name, Purposes, Composition and Territory.*
Definition of Words and Terms.

S. S. 388.

The word "Society" as used in these laws shall mean "The Supreme Lodge Knights of Pythias, Insurance Department." The words "Supreme Lodge" shall mean the legislative and governing body of the Society or Order of Knights of Pythias. The word

“Lodge” shall mean a subordinate lodge of the Knights of Pythias under the jurisdiction of the Supreme Lodge Knights of Pythias or under the jurisdiction of some Grand Lodge which is itself under the jurisdiction of The Supreme Lodge Knights of Pythias. The word “Section” shall mean a subordinate body of the Insurance Department of The Supreme Lodge Knights of Pythias. The word “Board” shall mean the Board of Control of The Insurance Department of The Supreme Lodge Knights of Pythias. The words “Officer” or “Officers” shall mean a Supreme Officer or Supreme Officers of The Insurance Department of The Supreme Lodge Knights of Pythias. The words “Insurance Department” and “The Supreme Lodge Knights of Pythias, Insurance Department” shall mean the same as the words “The Supreme Lodge Knights of Pythias” restricted only and relating solely to the Insurance Department of The Supreme Lodge Knights of Pythias heretofore commonly called The Endowment Rank Knights of Pythias. The words “Endowment Rank” as heretofore used in connection with this Society shall mean the same as the words “Insurance Department of the Supreme Lodge Knights of Pythias.” The words “monthly payment” as used in these statutes shall mean the same as a monthly assessment.

Name — Charter.

S. S. 389.

The name of this Society shall be “The Supreme Lodge Knights of Pythias,” and in all matters and things respecting and relating to said Supreme Lodge as referred to or contained in Division VII, Part Two, and the business therein provided for, the use of the name “The Supreme Lodge Knights of Pythias, Insurance Department,” is adopted and authorized for convenient designation. It is incorporated by Act of the Congress of the United States, approved by the

President June 29, 1894, and exists as a corporation by reason of said act and the act amendatory thereof,
 997 and the original Articles of Incorporation and the amendments thereto.

Nature and Purposes.

S. S. 390.

This Society in its Insurance Department is a fraternal beneficiary society. Its purposes, in accordance with its charter, organization and plans, are to provide for and pay benefits to the beneficiaries of such deceased members of the order of Knights of Pythias as may die while members in good standing in the Insurance Department of the Supreme Lodge Knights of Pythias, *and in good standing in a subordinate lodge of said Order, and to pay to members in like good standing benefits in case of sickness, temporary or permanent physical disability, as may be provided in its laws.*

Composition.

999

S. S. 391.

This Society in its Insurance Department shall be composed of an unlimited number of members, organized into subordinate bodies known as Sections, and whose obligations and rights and the rights of their beneficiaries are limited by the Class or Plan to which each member belongs. Membership in the Insurance Department can be attained only by members in good standing in a subordinate lodge of this Society, and
 1000 who possess the following qualifications, viz.:

(a) Who have attained the Knight Rank in a subordinate lodge of this Society.

(b) Who are between the ages of 21 and 50 years; provided: that, except in states, territories or provinces where the laws forbid, membership may be obtained in the Fifth Class by applicants who are between the ages of 21 and 60 years and who are otherwise eligible.

(c) Who are mentally, morally and physically eligible to be classed as desirable insurance risks.

(d) Who are not following any calling or occupation in the prohibited class as hereinafter named, nor engaged in any business deemed by the Board to unfit one for insurance. 1001

Membership can be maintained in the Insurance Department of this Society only by the observance on the part of its members of the provisions contained and mentioned in these Statutes.

At the date of the adoption of these Statutes the membership of the Insurance Department (heretofore called the "Endowment Rank") is hereby declared to be divided into three classes, viz.: 1002

(i) The First Class composed of not to exceed four members.

(ii) The Second Class composed of not to exceed four members.

(iii) The Fourth Class composed of all other members of said Insurance Department heretofore called the "Endowment Rank." 1003

The obligations of the members of the said three classes, their rights and the rights of their beneficiaries, are now and have always been, measured by the laws governing the particular Class to which each member belongs. A continuation of this policy is hereby declared so long as there are members of more than one Class. Without in any way disturbing the status of any member of either the First, Second or Fourth Class, it is hereby declared the purpose of this Society to create and establish a new Class to be called the Fifth Class. Except as may be otherwise specifically provided, every and all provisions of these Statutes apply alike upon all members of the Insurance Department without regard to a division of the membership into Classes. 1004

Territory.

S. S. 392.

- 1005 The territory to be occupied by this Society shall at all times, except as may be restricted by the Board, be co-extensive with the jurisdiction of the Supreme Lodge. The Board may, when deemed for the best interests of the Society, decline applications for membership from residents, permanent or otherwise, of any country, state, territory or province, or any part thereof and may, as occasion may require, in the opinion of the Board, restrict members from going into or residing
- 1006 in territory infected with disease or subject to great epidemics or hazards.

CHAPTER II.

Board of Control — Composition and Powers of — Authorization.

S. S. 393.

- For the purpose of effecting the orderly conduct of the business of the Insurance Department of this Society, there is hereby created a Board of Trustees to be known as the "Board of Control," which Board shall have full charge and complete control of the business and affairs of the Insurance Department, subject at all times and in all things to the direction of, and to account and report to the Supreme Lodge Knights of Pythias.
- 1007

Composition.

S. S. 394.

- 1008 The Board of Control of the Insurance Department of the "Supreme Lodge Knights of Pythias" shall be composed of the Supreme Chancellor, the Supreme Vice-Chancellor and the Junior Past Supreme Chancellor, ex officio, and six members, who shall be elected by the Supreme Lodge.

Qualifications.

S. S. 394.

Any Past Grand Chancellor of this Society in good standing who shall have taken the Supreme Lodge Rank, shall be eligible for membership on the Board. 1009

Terms of Office.

S. S. 395.

The terms of office of the members of the Board shall be as follows: For the Supreme Chancellor, the Supreme Vice-Chancellor and the retiring Junior Past Supreme Chancellor, during their terms as such respectively, and for the elective members, the full period of six years and until their successors are elected and qualified, two members to be elected at each regular convention of the Supreme Lodge; provided, that the term of office of the present members in office at the opening of the Supreme Lodge Convention of 1906 shall continue until the expiration of the terms for which they were elected; and provided, further, that at the Convention of 1906 there shall be elected three members of the Board, two for the term of six years, and one for the term of two years. 1010 1011

Obligation.

S. S. 396.

Before assuming the duties of his office, each member of the Board shall subscribe to an obligation in duplicate, one of which shall be filed with the Supreme Keeper of Records and Seal, and one with the Secretary of the Board, and shall be copied into a permanent record kept for that purpose in the office of the Board, which obligation shall be substantially in words and figures as follows: 1012

“I,, do solemnly pledge my Knightly honor that I will support the constitution and laws of the Supreme Lodge Knights of

- 1013 Pythias, and that I will discharge the duties of a member of the Board of Control honestly and faithfully and to the best of my ability. So help me God."

Meetings.

S. S. 397.

- 1014 The Board shall meet quarterly, beginning on such days of the months of January, April, July and October, as may be determined by the Board or as shall be designated by the President of the Insurance Department. Special meetings may be called by the President whenever by him deemed necessary, and shall be by him so called upon the written request of any three members. Five members shall constitute a quorum, and no business shall be transacted at any meeting unless a quorum be present. The concurrence of five members present shall be required to take affirmative action. Each member of the Board shall have sufficient notice of all meetings of the Board to enable him to travel thereto from his place of residence. Unless otherwise provided in the notice, meetings of the Board shall be held at the Society's head office.

Headquarters.

S. S. 398.

- 1016 The headquarters of the Insurance Department and the place where its head office shall be maintained for the transaction of its business, shall be in the City of Chicago, in the State of Illinois, unless otherwise ordered by the Board, upon the written authority of six members of the Board.

Duties.

S. S. 399.

It shall be the duty of the Board to attend the Supreme Lodge conventions and the members thereof shall be privileged to take part in all discussions affecting the Insurance Department matters. For their ser-

vices at Supreme Lodge conventions, the members of the Board shall receive the same compensation as Supreme Representatives, and for their services at the sessions of the Board they shall receive out of the expense funds of the Insurance Department the sum of ten dollars per day, and the same mileage as Supreme Representatives, per diem and mileage to be computed according to the manner of computing the same for Supreme Representatives, provided, that no member of the Board shall draw mileage and per diem both as a member of the Supreme Lodge and of the Board for the same journey or day, nor double compensation in any event.

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1018

Executive Committee.

S. S. 400.

The Board shall have power to appoint a committee to be known as the Executive Committee of the Board. It shall consist of at least three, and any member or officer of the Board shall be eligible for membership on the Executive Committee. Such Committee shall meet at such times as the Board may direct and shall, during the interim of Board meetings, act for said Board in all matters that may lawfully be submitted to it. It shall only possess administrative powers such as the examining, auditing and passing upon proofs of death, applications for membership and restoration to membership, awarding of contracts for supplies and printing, and such other matters as may be required of it by the Board. In all its acts it shall strictly observe the laws of the Society and follow the instructions of the Board. A majority of the Committee shall constitute a quorum and a concurrence of a majority shall be required to transact business. The General Secretary shall attend all meetings of the Executive Committee and take and keep accurate minutes of the same, showing all actions taken by said Committee. Such minutes shall be written up immediately following each meet-

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- ing of the Committee and copies thereof mailed at once to each member of the Board. All acts of the Committee shall be the subject of review by the Board at the next meeting thereof. The appointment to and service on the Executive Committee shall in no wise relieve any officer of the Insurance Department of any duty or responsibility pertaining to his office. Any member of such Committee not an officer, shall receive for his services as such Committeeman, the same compensation paid members of the Board, but shall not receive double pay. The Executive Committee shall possess no power except as herein granted or as may be expressly granted by the Board, and shall in no case assume the duty or power of any officer except in the event of death, resignation or inability of an officer to act, in which event the Executive Committee may provide for the emergency in such way as may seem best to it. The Board shall have the power to appoint such other committees from time to time as occasion may require and to prescribe their duties.

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Reports.

S. S. 401.

- The Board shall present at each regular convention of the Supreme Lodge a full and complete written or printed report covering the entire period since the date of its last report to the Supreme Lodge, which report shall contain a complete statement of its official acts and decisions, and of the operations of the Insurance Department, its income and disbursements, and shall contain such other information as will fully advise the members of the Supreme Lodge of the past history, current condition and future prospects of said Insurance Department; it being expressly intended that the Board shall at least once every two years report to the members of this Society all of the business done, the amount of income and sources of same, the amount expended or disbursed, and the purpose of the same, detailed

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description and history of all investments made and securities and investments on hand, and also the general condition of the Insurance Department from an actuary standpoint, and a copy of this report shall be forwarded by mail to every member of the Supreme body, so as to reach him at least 10 days before the date fixed for the opening of the ensuing biennial convention. The fiscal year for the Insurance Department shall begin with the first day of July and end with the last day of June. The Board shall also report, at such times as the Supreme Lodge may require, upon such other matters as may be required. During the recesses of the Supreme Lodge the Board shall make to the Supreme Chancellor reports covering such subjects relative to the Insurance Department as he may require. It shall be the duty of the Board to present from time to time to the Supreme Lodge recommendations looking to the progress, advantage and perpetuity of the Insurance Department.

Official Communications.

S. S. 402.

The Board shall have authority to address to any Grand or Subordinate Lodge of this Society, or to any officer or member thereof, any communication or circular pertaining to or connected with the Insurance Department, or its business, the same to be received and regarded as an official communication of this Society.

Care of Funds.

S. S. 403.

The Board shall deposit or cause to be deposited daily as received, the funds of the Insurance Department in such chartered bank or banks as it may deem proper; provided, that the banks in which shall be kept the current funds or open accounts to be known as the Insurance Department depository, or depositories, shall be designated by the Board at the first quarterly

meeting after the close of each regular Supreme Lodge convention, or as soon thereafter as the Board shall be
 1029 able to make satisfactory contracts with such depository or depositories.

The Board shall require each bank selected as a depository to agree in writing not to allow any funds of the Insurance Department to be withdrawn except by and upon check or warrant adopted and established for such use by the Board with the concurrence of such banks, and then only when signed and countersigned as may be required by resolution of the Board.

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Executive Powers—Investment of Funds.

S. S. 404.

The Board shall enforce all provisions of the Supreme constitution and statutes in relation to the Insurance Department, and, except as otherwise provided, shall have full power and authority to manage, carry on and conduct the business of the Insurance Department, and shall elect its officers and employ, or authorize the employment of all necessary assistants and clerks, prescribe the duties of and fix the compensation of officers, assistants and clerks, and may remove the same at pleasure. The President and General Secretary, acting jointly, are authorized to execute such bonds as may be required in proceedings at law or otherwise, to which this Society, by reason of any matters growing out of the Insurance Department may be a party or interested; provided,
 1031 however, that any bond exceeding the sum of fifteen thousand dollars shall be executed by the Supreme Chancellor and the Supreme Keeper of Records and Seal of this Society, acting jointly with the President and General Secretary aforesaid. It is directed to receive and safely keep the funds of the Insurance Department and to disburse the same only in strict accord with the authority conferred by this Society. The Board shall invest the funds on hand from time to time when not re-
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quired to pay the liabilities of the Insurance Department, nor to be kept on hand in cash for any other purpose, in securities readily convertible into cash, provided such investments shall be limited to government, state, provincial, county and municipal bonds, or bonds of any township, park or school district, having taxing power; provided, that such bonds shall be a direct obligation on all the taxable property within such municipality or district, and the net indebtedness of such municipality or district shall not exceed the statutory provisions governing same, or, in absence of a statute, five per centum of the value of all taxable property therein, according to the last valuation for taxation preceding the issuance of such bonds; or in first mortgages, or first mortgage bonds, or guaranteed mortgage bonds, upon improved real estate, provided that the total bond or mortgage issued shall not exceed fifty per centum of the actual cash value thereof, exclusive of improvements at the time of making the loan. No investment of the funds of the Society shall be made until such investment is authorized in writing by six members of the Board. Such authorizations shall describe with particularity the nature, character and amount of securities required in the making of each proposed investment, and such authorizations shall be kept as a permanent record in the office of said Board.

The Board, upon the written authority of six members thereof, may sell and dispose of any property, bonds or other securities on hand or hereafter acquired when, in its opinion, it is desirable to do so, and may reinvest the funds so received in accordance with the provisions thereof. It is authorized to make special assessments upon all members of any Class in the Insurance Department when in its opinion this course is necessary to be taken in order that the purposes of the Insurance Department may be carried out. It shall make quarterly reports to members of the Insurance Department, giving

- the financial condition and such other information concerning the Insurance Department as may be deemed necessary, copies of such report to be sent also to each Section officer and each officer and member of the Supreme Lodge. The Board shall also from time to time, and as may be deemed desirable by it, prepare, publish and distribute among the members of this Society such documents or literature as will advance the Insurance Department, and inform the members of this Society of its work and condition. It shall be authorized to issue each month a publication in the interest of the Insurance Department containing statements as to the finances and membership, official notices and information and such other items of interest as may be deemed advisable by the Board. Such notices as may appear in said publication shall be regarded as official and binding upon all members of the Insurance Department of this Society, provided, that a copy of the publication shall be mailed to every member affected by such official notice. The Board shall have authority to consolidate with this publication the quarterly report referred to in this section.

Power to Protect Investments.

S. S. 405.

- The Board, with the written concurrence of not less than six of its members, is authorized to use any funds of the Insurance Department that may be in its possession or under its control, or to sell, transfer, pledge, or otherwise dispose of any property, real or personal, or securities held in trust by it for the Insurance Department, and use the proceeds derived therefrom for the protection of the rights, interests and investments of the Insurance Department, whether the same be in real estate or otherwise.

Power to Purchase Real Estate.

S. S. 406.

The Board, with the concurrence of six members thereof in writing, is hereby authorized, empowered and directed, whenever in its judgment it may become necessary or be deemed advisable in order to protect any investment of the funds of the Insurance Department, to take such action as it may deem best in the premises, and for that purpose to purchase any real estate in which the funds of the Insurance Department may be invested, and to use so much of the funds or securities of said Insurance Department as may be necessary to pay the balance therefor, over and above the amount already invested therein, and in case there should not be sufficient funds on hand or available for that purpose, to incur debt to the amount and extent necessary to make said purchase and execute evidences of indebtedness in the name of the Supreme Lodge Knights of Pythias, the same to be signed by the Supreme Chancellor, attested by the Supreme Keeper of Records and Seal, and sealed with the Great Seal of the Supreme Lodge.

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Title to Real Estate.

S. S. 407.

Whenever the Board shall, in accordance with the powers herein granted it, purchase any real estate, securities, or credits, the title to which shall be in writing, the title thereto shall be taken in the name of the Supreme Lodge Knights of Pythias, and whenever said Board shall have expressed its desire in writing, as herein provided, that in its opinion it is necessary, advisable or desirable to dispose of by sale, mortgage, pledge, deed of trust or otherwise, any real estate, securities or other property acquired under the provisions of this Act, the Supreme Chancellor shall be and he is hereby authorized and empowered to convey title thereto to the purchaser, and for that purpose to make, execute and de-

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- liver any and all instruments of writings in the name of the Supreme Lodge Knights of Pythias, or otherwise,
- 1045 that may be necessary for the purpose of conveying, transferring, assigning, or disposing of any such real estate, securities, or other property, the same to be attested by the signature of the Supreme Keeper of Records and Seal under the Great Seal of the Supreme Lodge. Nothing herein shall be construed to authorize the Board to make any future investments of the funds of the Insurance Department, not in connection with or for the protection of the investments of said fund,
- 1046 other than in the kind and class of securities mentioned in Section Thirteen of this Chapter. Nothing herein shall be construed to require that bonds or other securities now owned or hereafter acquired by the Insurance Department which are payable to bearer shall be registered in the name of the Supreme Lodge, nor to require action on the part of the Supreme Chancellor and Supreme Keeper of Records and Seal in the sale and transfer of securities, except where title is to be
- 1047 conveyed by documents under seal.

Audit Committee.

S. S. 408.

- In advance of the quarterly meetings of the Board the Supreme Chancellor is authorized to appoint a committee of one or more members of the Board to audit the books and accounts of the officers of the Board, to examine into the conditions, securities and business of the Insurance Department, and to report thereon. Such committee shall receive the same mileage and per diem for such services it may render as is paid members of the Board for attendance upon Board meetings, provided, that no member of such committee shall draw double mileage or per diem by virtue thereof.
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Rules and Regulations.

S. S. 409.

The Board is hereby granted full power and authority 1049
to from time to time, and as occasion may require, adopt
and publish such rules and make such regulations as it
may see fit or deem necessary to carry out the full in-
tent and purposes of the authority granted to it by the
laws of this Society, and to fully effectuate the purposes
for which the Insurance Department was created and
now exists; such rules and regulations, when so adopted
and published, and until repealed by the Board or by 1050
this Society, shall have all the force of laws enacted by
this Society, so far as they pertain to the business of the
Insurance Department and the rights, duties and obliga-
tions of the members of this Society. It is hereby de-
clared to be the purpose of the Supreme Lodge to in-
vest said Board with all power and authority which is
usually possessed by boards of trustees and directors of
incorporated bodies, limited only by the express provis-
ions of these statutes. 1051

Care of Funds.

S. S. 410.

All of the funds of the Insurance Department are
hereby recognized to be trust funds, and same are to be
received, held, controlled and disbursed by the Board
in full appreciation of their trust fund character. The
Board shall provide suitable, safe and secure safes or
places of deposit in which the securities and evidences
of investments of the funds of the Insurance Depart- 1052
ment shall be kept, and the Board shall at all times take
such other means of caring for and preserving the funds,
properties and securities of the Insurance Department
as will insure same against depreciation and loss.

Benefit Certificates.

S. S. 411.

- 1053 The Board is hereby authorized to issue certificates of membership commonly known as Benefit Certificates, to prescribe the form of same and to make all necessary or desirable contracts in respect thereto and to provide for the payment of same.

Annulment of Certificates.

S. S. 412.

- 1054 The Board is hereby authorized to annul any certificate of membership, when, upon investigation, it finds that such certificate has been procured by misrepresentation or fraud, and also whenever a member becomes addicted to habits or vices in any form, so that, in the opinion of the Board, his life or natural expectancy is or may be thereby shortened, or whenever the Board finds that such member has already impaired his health or shortened his life expectancy, provided, that in all cases in which certificates are annulled, for causes stated in this Section, the Board shall cause to be refunded to the member such sums as may be found to be equitably due him in accordance with the further provisions of these statutes, and such rules and regulations as the Board may adopt from time to time; provided, however, that no certificate shall be cancelled except upon thirty days' written notice to the member, he being given an opportunity to be heard in opposition to such cancellation. In all such cases the member may waive the time, notice and trial, and plead immediately to the charges preferred. The failure of the Board to act in any case under the authority herein granted shall not preclude or estop this Society from asserting any defense that it might have in the absence of this Section.
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Appeals.

S. S. 413.

The Board shall hear and determine all appeals from the Sections and members of the Insurance Department, and its decisions shall be final, unless and until reversed by the Supreme Tribunal as hereinafter provided. 1057

Method of Appeal.

S. S. 414.

Members and Sections may prosecute appeals to the Supreme Tribunal from decisions of the Board affecting their rights. Such appeals must be taken within ninety days from the date of the service of the notice of the decision complained of upon the aggrieved party. The appellant shall, within that time, serve personally upon the Secretary of the Board and file with the Recorder of the Supreme Tribunal, a petition setting forth his cause of complaint, and shall attach thereto as exhibits all papers relating to the cause of complaint which are in his possession or control. The Board shall answer said complaint within thirty days after the same is served as above, and shall attach to its answer, as exhibits, such papers relating to its defense as it deems proper, and all papers in the case which may be called for by the petition of the appellant. Thereafter, all proceedings shall be in accordance with the Supreme Constitution and Supreme Statutes and rules of the Supreme Tribunal in cases in which the Supreme Tribunal has original jurisdiction. 1058 1059

Shall Turn Over Property.

S. S. 415.

It shall be the duty of each member of the Board and of all officers and employees of the Insurance Department and of the several Sections throughout the Supreme Domain, to deliver and turn over to their respective successors in office, immediately upon their election, or appointment, and qualification, all funds, property, 1060

- books, papers, documents and other matters or things pertaining or relating to or connected with the business of the Insurance Department, Board or the Section.
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Shall Prescribe Form of Applications, Certificates, Etc.
S. S. 416.

- The Board shall prescribe the form of all applications, certificates of membership or other forms, as well as the books, blanks and notices, unless otherwise provided by these statutes, and shall supply and furnish all printed and other material and supplies that may be needed in conducting the business of the Insurance Department and cause to be copyrighted such of the blanks, notices, forms and books used by the Society, the Sections and officers thereof, as it may deem expedient.
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May Establish Rules and Regulations.
S. S. 417.

- The Board shall have power to make, pass and enforce any order, rule or regulation to cover any exigency or case not provided for in the statutes of the Society, or by reason of inaction of the Supreme Lodge, provided, however, that it shall not possess the power to repeal, add to, take from, nor change any law of the Society. The powers that are herein granted to the Board are not to be regarded as exhausted by being once exercised, but are to continue until such powers are withdrawn by this Society.
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Reinstatement of Suspended Members.
S. S. 418.

- The Board shall have power to reinstate and restore any membership certificate suspended, forfeited or cancelled by mistake or otherwise, or where, in the opinion of the Board, such reinstatement or restoration is just and will conserve the best interests of the Insurance Department.
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Offices of Trust.

S. S. 419.

Every office in the Insurance Department is hereby declared an office of trust, and every officer a trustee, and every member of the Board and every officer of the Insurance Department shall be held to strict accountability in the exercise of authority and in the performance of every duty.

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Presiding Officer.

S. S. 420.

At the meetings of the Board the following shall be the presiding officers in the order named: The Supreme Chancellor, and in his absence, or on his vacating the chair, the Supreme Vice-Chancellor, or in the absence of both of said officers, or upon their vacating the chair, the Junior Past Supreme Chancellor. None of said officers named in this section shall receive any compensation from the Insurance Department, except that to which they may be entitled for mileage and per diem, as members of the Board, or members of the Executive Committee of the Board.

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Seal.

S. S. 421.

The Board shall have the power to make, adopt and use a seal for the Insurance Department, the same to be of such design and size as the Board may determine.

CHAPTER III.

Officers and Bureaus.

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Officers.

S. S. 422.

The officers of the Insurance Department shall be elected by the Board at the first quarterly meeting after each regular convention of the Supreme Lodge, unless the Board shall, for good cause, provide otherwise; or unless it shall adjourn such election to a later date.

- 1069 Such officers shall be as follows: A President, a General Secretary, a General Counsel, and a Medical Examiner-in-Chief. The Board may select such additional assistants as may be deemed necessary from time to time. The Board shall have authority to prescribe the duties and fix the compensation of all officers and employees.

Terms of Officers.

S. S. 423.

- 1070 The terms of the officers of the Insurance Department shall be until the time for the election of officers at the meeting of the Board, held for that purpose after the next regular convention of the Supreme Lodge, except that any officer may, at the pleasure of the Board, be removed, and, in the event of a vacancy ad interim of the Board meetings, either by resignation, death or otherwise, such vacancy shall be filled, until the next regular meeting of the Board, by appointment of the Supreme Chancellor.

Obligation.

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S. S. 424.

Each officer, before entering upon the discharge of the duties of his position, shall take and subscribe the following obligation:

- 1072 “I,, do solemnly pledge my Knightly honor that I will support the constitution and laws of the Supreme Lodge Knights of Pythias, and that I will discharge the duties of (naming position) honestly and faithfully and to the best of my ability. So help me God.”

This obligation shall be in writing and in duplicate, one of which shall be filed with Supreme Chancellor, and one with the Secretary of the Board, and shall, by the latter officer, be copied into a permanent record kept for that purpose in the office of the Board.

Drawing of Checks.

S. S. 425.

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In the payment of the liabilities of the Insurance Department the General Secretary shall draw checks on the proper bank account therefor, after the claim made has been audited and approved as the Board may direct; and before any check shall be valid for payment at the bank on which it is drawn, the same shall be countersigned in writing upon its face by such officer as the Board may, by resolution, direct.

Bureaus.

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S. S. 426.

The Board shall have full power and authority to organize the members thereof and officers into such Bureaus as it may deem for the best interests of the Insurance Department, with full power to define the duties of the respective officers and the members of the different Bureaus that may be created under this power, and to require of any officer, employe or member or any Bureau, a bond or bonds for the faithful performance of his duties, conditioned as it may determine.

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CHAPTER IV.

*Sections of the Insurance Department.**Section Membership.*

S. S. 427.

Subordinate or local branches of the Insurance Department shall be termed "Sections," into which the membership of the Insurance Department shall be grouped. Each member of the Insurance Department, in addition to maintaining his membership in a subordinate lodge, shall maintain membership in a Section of the Insurance Department.

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Petitions for Sections.

S. S. 428.

- 1077 Petitions for the organization of Sections of the Insurance Department must be made in the form provided by the Board, and shall be forwarded to the Board, accompanied by the individual applications of the petitioners, a membership fee of fifty cents for each \$500.00 benefit applied for, and the first monthly payment of each applicant, the payment to be based upon the occupation and age at nearest birthday to date of application, and in accordance with the table of rates applicable and in force at date of the petition in the Class to which the applicant desires admission, and upon the particular Plan selected.
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Requirements of Applicants.

S. S. 429.

- Each applicant, after entering his name upon the petition, shall make a regular application for membership in the Insurance Department, upon a form provided by the Board, and be examined in accordance with the prescribed "rules for medical examiners," by a physician selected by the Board, or under its direction, who shall prepare, sign and forward to the Board, or as it may direct, the application, together with his report thereon in the form prescribed. Said application shall form the basis of the contract and be a part of the contract of membership in the Insurance Department if said application is accepted.
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Warrants of Authority.

S. S. 430.

Sections shall exist by virtue of warrants of authority issued by the Board, or under its direction, which shall be in the form prescribed by the Board.

Organization of Sections.

S. S. 431.

Sections shall not be organized until the applications of at least five petitioners shall have been approved by the Medical Examiner-in-Chief and accepted by the Board or its Executive Committee. In the organization of a new Section, the Section officers (President, Vice-President and Secretary) shall be elected from the members, subject to the approval of the Board or Executive Committee, and their names noted on the petition before the same is forwarded to the Board. When the required number of applicants for organization is accepted, the Board shall cause to be issued the warrant of authority and forward it, together with the certificates of membership, books, seal and all necessary supplies, to the Section Secretary; whereupon the Section shall be deemed duly organized. The Board or the Executive Committee shall have the power summarily to remove officers of Sections whose further continuance in their respective offices, in the judgment of the Board or Executive Committee, is deemed injurious to the interests of the Insurance Department; and shall also have power to appoint their successors to hold office until the next regular meeting of the Section held for the election of officers.

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Legal Name of Section.

S. S. 432.

Each Section shall have an official seal of uniform design, numbered to correspond with the number of the Section, and which number shall be the legal name of the Section, and which seal shall be furnished by the Board and shall be affixed to all official documents of the Section.

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Consolidation of Sections.

S. S. 433.

In cities or localities where two or more Sections

1085 exist, the Board or Executive Committee may, at its discretion, consolidate said Sections into one or more general Sections.

Suspension of Sections.

S. S. 434.

1086 Whenever a Section is suspended or dissolved, or for any reason its warrant of authority is taken up or cancelled or suspended, the members of such Section shall be transferred to some other Section by the Board or Executive Committee, and notice of that fact promptly given to the members transferred and to the officers of the Section to which the transfer is made. The action of the Board or Executive Committee in the premises shall be binding until reversed or set aside by competent authority.

Reversion of Section Property.

S. S. 435.

1087 The property, records and supplies of a Section whose warrant of authority is surrendered or cancelled shall immediately revert to the Board and become its property, and be delivered to it by whomsoever has possession of same.

Section By-Laws.

S. S. 436.

1088 Each Section is authorized to make by-laws for its own government not inconsistent with the laws of the Supreme Lodge or the rules of the Board. Before said by-laws, or any of them, shall become operative, they shall first be submitted to and approved by the President and General Counsel of the Board.

Compensation of Section Secretaries.

S. S. 437.

The full compensation of Section Secretaries for their services and to cover their expenses in the transaction of the business of their office shall be five per

cent. of the amount collected and remitted by them to the Board. Payment of such compensation shall be made to Secretaries by the Board at least once every three months, out of funds collected for expense purposes. No part of the collection made by Secretaries shall be deducted or withheld by them. 1089

Cannot Levy Tax, Dues, Etc.

S. S. 438.

Sections and Section officers shall not have power to levy or collect any tax, dues or charge upon the membership of the Insurance Department. 1090

Section Payments.

S. S. 439.

The Secretaries of Sections shall forward to the Board the monthly payments and assessments collected immediately after the twentieth day of each and every month. If such payments and assessments are not paid to the Board on or before the last day of the same month, the Section so failing to pay shall stand suspended from membership in the Insurance Department and its warrant of authority shall be *ipso facto* suspended. Notice of such suspension shall be forthwith sent by mail by the General Secretary, addressed to their last known post office address in the office of the Board, to the President, the Secretary and to each member of such Section, provided, that such notice shall not be a part of the process of suspension; provided, further, that any surviving members of a Section, not less than three, whose warrant has been suspended shall regain all rights it had as a Section, and each such member thereof his full rights and privileges held previous to such suspension and forfeiture, if within thirty days from the suspension of warrant, said Section shall pay to the Board all monthly payments and assessments unpaid and accrued upon said members; provided that the member who has paid his 1091 1092

- 1093 monthly dues and assessments as required by law shall not be affected by the suspension of his Section, and shall be deemed in good standing in the Insurance Department; and, until his transfer to another Section, he shall pay his dues and assessments directly to the Board of Control.

Responsibility of Section Secretaries.

S. S. 446.

- 1094 Secretaries of Sections are responsible to the Board for all moneys collected from members for monthly payments and assessments not paid over to the Board within the time and manner prescribed by the statutes and the rules of the Board governing the Insurance Department.

Bonds Required.

S. S. 447.

- 1095 All Section Secretaries, before entering upon their duties, shall execute such bond as the Board or the Executive Committee may require, which bond shall obligate the Secretary to pay to the Board all moneys from members of their Section coming to their hands, and to deliver all property to the Board in accordance with the laws of the Supreme Lodge and the rules of the Board.

General Rights Defined.

S. S. 448.

- 1096 No officer of a Section and no officer of the Insurance Department shall possess or have the power to waive any of the requirements or laws of the Supreme Lodge, nor shall they by any course of dealing or conduct bind the Supreme Lodge or estop the Supreme Lodge from insisting upon the strict observance and enforcement of all laws. No member of the Insurance Department shall gain any right by reason of the misconduct, omission or malfeasance of an officer. The right of the Supreme Lodge at all times, as the representative of the ag-

gregate membership in the Insurance Department, shall be superior to the rights of individual members claiming rights by reason of some course of dealing or conduct of an officer in violation of the laws of the Supreme Lodge. 1097

CHAPTER V.

Section Names, Meetings, Quorums, Supplies, Etc.

Legal Name.

S. S. 449.

Each Section shall be known as Section No. of the Supreme Lodge Knights of Pythias, Insurance Department. 1098

Regular Section Meetings.

S. S. 450.

Meetings of Sections for the transaction of official business shall be held at such time and place as may be fixed by the by-laws of such Section. A meeting shall also be held in December of each year for the election of a President, Vice-President and Secretary, who, together with the Section Medical Examiner, or Examiners, shall constitute the officers of a Section, and who shall serve for the ensuing year, and until their successors are elected and qualified. Such officers must be members of the Section; provided, that Section Medical Examiners may hold office in more than one Section. The Medical Examiners shall be competent, registered and practicing physicians. Wherever and whenever it is deemed advisable, Medical Examiners may be appointed for Sections, even though they are not members of a subordinate lodge. 1099 1100

Special Meetings.

S. S. 451.

Special meetings of Sections, when necessary, may be held upon the call of the President, or at the request of two members of the Section, but in case of all special meetings before the same shall be valid, notice of such

- 1101 meeting, giving the purpose of the same, shall be given to all members at least three days before such special meeting. Three members shall constitute a quorum of a Section meeting.

Section Supplies.

S. S. 452.

- 1102 The supplies for use of a new Section, consisting of the seal and necessary books, blanks, etc., together with all subsequent supplies required by Sections, and the preliminary blanks for organization shall be furnished by the Board upon application free of charge.

Section President.

S. S. 453.

The President shall preside at all meetings of the Section. He shall see that the laws of the Insurance Department and rules and requirements of the Board are complied with by the officers and members of the Section.

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Section Vice-President.

S. S. 454.

The Vice-President shall discharge all the duties of the President in case of his absence or inability to perform any specific work required of him by the laws of the Supreme Lodge or rules of the Board. In the absence of both President and Vice-President, any member may be called to preside.

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Section Secretary.

S. S. 455.

The Secretary shall receive all applications for membership, made out in proper form, and forward them, accompanied by the membership fee and first monthly payment, to the Board. When notified of the rejection of an applicant the Secretary shall promptly return all moneys paid. The Secretary shall keep a faithful record of the business of the Section transacted in the meet-

ings or by the authorized officers during the recess; also a financial account with each member of the Section. He shall keep a correct record of the postoffice address and occupation of each member, and record changes thereof, of which he has notice. He shall notify the Board immediately of any changes of address or of occupation of members. He shall use the books, blanks and forms furnished by the Board, and perform all other duties required of him by the laws of the Insurance Department, or by the rules of the Board. Before entering on the discharge of his duties the Section shall require the Secretary, and he is hereby required, to make and execute a bond to the Supreme Lodge Knights of Pythias, to secure the due and prompt payment to said Board of all membership fees, monthly payments and assessments collected by him as Secretary from the members of said Section, and to turn over to his successor, or to the Board, upon demand, the records and property of his office, and for the faithful performance of all duties of his office, the penalty of which bond shall not be less than the maximum amount of three monthly payments collected from all the members of said Section. No person shall be the agent of the Supreme Lodge for the collection of monthly payments or assessments, or authorized to receive any money on account thereof, until he shall have executed and delivered a bond as required by this Section, and the same shall have been approved and accepted by the Board.

Vacancies—How Filled.

S. S. 456.

In case of the death, resignation or removal of any officer, the Section shall immediately fill the vacancy for the unexpired term. Upon the failure or refusal of the Section to fill such a vacancy the Board or Executive Committee may make such appointments as may be by it deemed proper.

Section Medical Examiners.

S. S. 457.

- 1109 The Section Medical Examiners shall be appointed by the Board, and shall examine applicants for membership in accordance with the prescribed form and instructions given on the application blank, and make report upon all examinations upon the blanks furnished, and, whenever deemed necessary, make special report to the Board for reference to the Medical Examiner-in-Chief on any examination made. He shall forward to the Board all applications in which the risk is declined by him, and
- 1110 make full report whenever required so to do by the Board or the Medical Examiner-in-Chief.

Compensation for Section Officers.

S. S. 458.

- No Section Officer, except the Secretary and Medical Examiner, shall receive any compensation for their services, and they shall receive none other than that prescribed in these laws or authorized by the Board. The
- 1111 Board shall not be liable for the expenses of any officer in conducting the business of his office.

Remittances—How Forwarded.

S. S. 459.

- Remittances of funds to the Board by the Section Secretary shall be made only by bank exchange, postoffice or express money order or registered mail, but in no event shall the Board be charged with any sum remitted to it until same has reached the Board, and in the event that
- 1112 any bank exchange or money order sent to the Board is not paid on presentation by the person upon whom it is drawn, the Secretary remitting same shall immediately pay the amount thereof, with such expenses as may have been incurred by the Board.

CHAPTER VI.

Classes, Membership, Members' Obligations and Rights. 1113
Classes.

S. S. 460.

In conformity with the policy upon which the Insurance Department was organized and established and has been conducted, the membership thereof shall be continued in Classes, and each of the First, Second and Fourth Classes, in which all the members of the Insurance Department at the date of the passage of these statutes are now, shall be maintained so long as there are any members in said Classes, respectively. 1114

First Class Membership.

S. S. 461.

The First Class shall be maintained as organized and as it exists on the date of the passage of this law, so long as there are any members in said Class. All members of said First Class shall continue therein, subject to the same obligations and possess the same rights and be entitled to the same benefits as they now are, without change, enlargement or diminution, except as the Supreme Lodge shall otherwise provide, and all laws, rules, forms and business details heretofore enacted by the Supreme Lodge for the government of the First Class, and as the same were in force on the first day of January, A. D. 1886, shall, subject to repeal, change or modification hereafter, remain in full force and effect so long as there are any members in said Class, and upon the death or retirement of the last member of said Class and the discharge of all the obligations of the Insurance Department to said First Class, the Board shall report such fact to the Supreme Lodge, and said First Class shall thereupon cease to exist. 1115 1116

Second Class Membership.

S. S. 462.

- 1117 The Second Class shall be maintained as organized and as it exists on the date of the passage of this law, so long as there are any members in said Class. All members of said Second Class shall continue therein, subject to the same obligations and possess the same rights and be entitled to the same benefits as they now are, without change, enlargement or diminution, except as the Supreme Lodge shall otherwise provide, and all
- 1118 laws, rules, forms and business details heretofore enacted by the Supreme Lodge, for the government of the Second Class, and as the same were in force on the first day of January, A. D. 1886, shall, subject to repeal, change or modification hereafter, remain in full force and effect so long as there are any members in said Class, and upon the death or retirement of the last member of said Class, and the discharge of all the obligations of the Insurance Department to said Second
- 1119 Class, the Board shall report such fact to the Supreme Lodge, and said Second Class shall thereupon cease to exist.

Third Class Membership Discontinued.

S. S. 463.

- There no longer being any members in the Third Class and all of the obligations of the Insurance Department in said Class having been fully discharged to said Third Class, it is hereby declared that upon the
- 1120 passage of this law the former Third Class of the Insurance Department has ceased to exist.

Fourth Class Membership.

S. S. 464.

The Fourth Class shall be maintained as organized and as it exists on the date of the passage of this law, so long as there are any members in said Class. All members of said Fourth Class shall continue therein,

subject to the same obligations and shall possess the same privileges and rights, and be entitled to the same benefits as they now are, without change, enlargement 1121 or diminution, except as the Supreme Lodge shall otherwise in this code of laws specifically provide, and all laws, rules, forms and regulations heretofore enacted by the Supreme Lodge, for the government of the Fourth Class and as the same were in force on the first day of October, A. D. 1906, except as the same may be repealed, added to, or changed, by this code of laws, and subject further to repeal, adding to or change, hereafter, shall remain in full force and effect so long 1122 as there are any members in said Class. It is hereby declared that all provisions of these statutes relating to the Insurance Department or membership therein, shall apply to and be binding upon all members of the Insurance Department at the time of the enactment of these statutes, and their contracts shall be governed and controlled thereby, subject to the further changes authorized in this section. *Provided, that in so far as this section is or may be now in conflict with Section 1123 468, Supreme Statutes, as amended at this convention, and with other laws at this convention enacted, this section is hereby repealed, but that except as to such conflict it shall remain in full force as though no amendments to law or laws had been enacted at this convention.*

Division of Membership.

S. S. 465.

In the operations of the Insurance Department the 1124 membership of each class shall be kept separated on the records from the membership of every other class. The books and records of the Board shall show at all times the individual and total membership of each Class, and, to that extent, each Class shall be treated as a separate and distinct Society.

Fourth Class Funds.

S. S. 466.

- 1125 All of the moneys, bonds, mortgages, notes, credits, securities and properties, of every kind of the Insurance Department, on hand at the close of business on the 31st day of December, A. D. 1906, not belonging to the First or Second Classes, composing the mortuary fund of the Fourth Class, are hereby declared to be a trust fund — said fund and its accretions, or so much thereof as may be necessary to be used to assist in meeting the obligations of the Fourth Class, and shall, together with subsequent and future contributions of the members of the Fourth Class, for mortuary purposes, and the accretions thereto, constitute the mortuary fund of the Fourth Class.
- 1126

Fourth Class Certificates.

S. S. 467.

- The Board is hereby authorized to issue benefit certificates in the Fourth Class and to provide for the payments of same, said certificates to be in sums of \$500, \$1,000, \$2,000 and \$3,000, respectively, and to be issued only upon approved applications from persons eligible to membership in the Fourth Class of the Insurance Department. The form of application for membership in the Fourth Class and Benefit Certificate, shall be prescribed by the Board and may be changed from time to time by the Board as it deems wise. Every condition of the contract made in the
- 1127
- 1128 Fourth Class shall be written or printed in or upon the Benefit Certificate, except those contained in the application, medical examination and in the laws in force at date of the Certificate, and the laws that may be subsequently enacted by the Supreme Lodge.

*Monthly Payments and Membership Fees.**Fourth Class.*

S. S. 468.

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To the end that every Certificate in the Fourth Class of the Insurance Department shall upon maturity be paid in full according to the tenor thereof, the Supreme Lodge enacts and declares that:

(a) Each applicant for membership in the Fourth Class in the Insurance Department shall, upon completion of his application for transmission to the Board, pay to the Secretary of the Section or duly authorized representative of said Board, a membership fee of fifty cents for each \$500 of benefit applied for, and shall pay in accordance with his age, occupation and the amount of *benefit* applied for, a monthly payment as provided in the table herein, and if accepted, such member shall continue to pay the same amount (less the membership fee) each month thereafter *in accordance with the laws* governing the Insurance Department unless otherwise provided for by enactments of the Supreme Lodge. 1130 1131

(b) Every member of the Fourth Class of the Insurance Department at the time when this statute takes effect and who continues his membership until December 31, 1910, shall pay a monthly payment for each month thereafter, beginning with the month of January, A. D. 1911, monthly payments in accordance with his attained age and occupation, and the amount of benefit provided for in his certificate, on January 1, A. D. 1911, as fixed by the table herein, unless and until otherwise provided by enactments of the Supreme Lodge. 1132

(c) The following table represents gross rates covering the amounts of both mortuary and expense elements, and are on one thousand dollars of insurance. Payments on certificates in the sum of \$500 shall be

283

one-half of the following rates except where the last figure of the rate is 5. In cases of this kind the rates shall be one-half the scheduled rates, plus $2\frac{1}{2}$ cents. Rates on \$2,000, \$3,000, \$4,000 and \$5,000 of insurance shall be 2, 3, 4 and 5 times the scheduled rates respectively.

In the case of members following occupations or employments graded as hazardous, or extra hazardous, they shall pay in addition to the amount required under the table, the amount required by reason of such grading. The first column gives the age applicable in the case of the new member to his age at nearest birthday at date of admission, and to the present member who continues his membership until said January 1, A. D. 1911, his attained age on said date. The second column gives the amount of each monthly payment applicable to each respective age.

TABLE OF MONTHLY PAYMENTS PER \$1,000.

	21	\$1.40	44	\$2.70	67	\$7.75
1135	22	1.45	45	2.80	68	8.20
	23	1.50	46	2.90	69	8.65
	24	1.50	47	3.00	70	9.15
	25	1.55	48	3.15	71	9.70
	26	1.60	49	3.30	72	10.30
	27	1.60	50	3.45	73	10.95
	28	1.65	51	3.60	74	11.60
	29	1.70	52	3.75	75	12.35
	30	1.75	53	3.90	76	13.15
1136	31	1.80	54	4.10	77	14.05
	32	1.85	55	4.25	78	15.00
	33	1.90	56	4.45	79	16.10
	34	1.95	57	4.65	80	17.30
	35	2.00	58	4.90	81	18.65
	36	2.05	59	5.15	82	20.15
	37	2.10	60	5.40	83	21.85
	38	2.15	61	5.65	84	23.80
	39	2.25	62	5.95	85	26.10

40	2.30	63	6.25	86	28.80	
41	2.40	64	6.60	87	31.90	
42	2.50	65	6.95	88	35.50	1137
43	2.60	66	7.35	89	39.65	
				90	44.60	

The amounts received under the above table shall be divided into two separate and distinct funds. Ninety per centum of the receipts from payments under the above table shall be paid into and be known as the mortuary fund of the Fourth Class, and shall be used exclusively in the payment of claims incurred under certificates of membership, whether by death or otherwise, in said Fourth Class, except as may be otherwise provided for in Section 515, Supreme Statutes, and ten per centum of the receipts from payments under said table, together with such other sums as may be provided for in said Section 515, Supreme Statutes, shall be paid into the Expense Fund of the Insurance Department. 1138

(d) The Board is empowered and directed to prepare and promulgate as speedily as possible, a table of monthly payments providing for insurance of five-year and ten-year periods, respectively, using the table of rates hereinbefore provided for as a basis for the said tables for said term insurance, and to grant to the members of said Fourth Class the privilege of surrendering their present certificates and accepting in lieu thereof certificates in either of the said five-year or ten-year term plans herein provided. 1139

(e) The Board is hereby empowered and directed to prepare and promulgate as speedily as possible, a table of rates based upon and using the above and foregoing table set out in paragraph "c" as the standard of measurement, making it applicable to each present member of the Fourth Class, and who may continue his membership to said January 1, 1911, so as to give to each said member, insurance at the rate he is now 1140

1141 paying or may be paying for the month of December, 1910, for such period of time as said rate, providing for one payment each month, will continue. The purpose of this provision being to give to said members the option of continuing at the rates that they are now paying for such a period of time as said rates will give them protection, using the standard of payments provided for in paragraph "c" hereof as the basis for determining the cost of the insurance.

1142 (f) The Board is hereby empowered and directed to as speedily as possible, prepare and promulgate a table of rates using the said table set out in paragraph "c" hereof as the basis and standard of measurement so as to offer to the members of said Fourth Class who may continue their membership to January 1, 1911, insurance thereafter by scaling their present certificates down to such sum as the rates that they are, or may be paying for the month of December, 1910, will provide insurance for the whole period of life.

1143 (g) The Board is hereby empowered and directed to as speedily as possible, prepare and promulgate a table or plan using the table of rates in paragraph "c" hereof as a standard of measurement, whereby after the first day of January, 1911, members of the Fourth Class who may desire to do so may continue making the monthly payments at the same rate as they pay for the month of December, 1910, and have charged against their certificate as a lien thereon, and the amount thereof to be deducted at the maturity of their certificate, from any sum that may be due thereon, the then value as of January 1, 1911, and the additions down to the time of maturity of the deficiency so found to be due upon each member's contract, respectively, by reason of the payment of an insufficient rate under the tables now and heretofore in force in said Fourth Class, using the said table in said paragraph "c" hereof, as

aforesaid, for the ascertainment of the amount of said deficiency.

(h) The Board is hereby empowered and directed 1145
to make, promulgate and enforce rules and regulations,
giving to all members of the Fourth Class from and
after January 1, 1911, who may satisfy the Board that
they are unable to pay in cash the full amount of each
monthly payment, as provided for according to the
table of rates in this section set out as herein provided,
the privilege of making a payment in cash of such a
portion of the monthly rate due from them, as is equal 1146
to that portion of their rate required for current mor-
tality and expense purposes, allowing the balance of
said monthly rates to be charged against their certifi-
cates as a lien thereon, which, together with five per
centum per annum, as interest, shall be due and pay-
able from them at their pleasure, and if not paid dur-
ing their lifetime, shall be deducted from the amount
due upon their respective certificates.

(i) The Board is hereby empowered and directed to 1147
make, promulgate and enforce all necessary rules pro-
viding for the transfer of any present member of the
Fourth Class, who may desire to so transfer his insur-
ance, or any portion thereof, to the Fifth Class, such
transfer to be made at any time without expense to
him and without medical examination.

(j) The Board is hereby empowered and directed to
as speedily as possible prepare, promulgate and enforce
rules and regulations for granting to all members of
the Fourth Class from and after January 1, 1911, 1148
benefits to be paid to said members in the case of sick-
ness, temporary or permanent physical disability,
either as the result of disease, accident or old age, pro-
vided, that the period of life at age of payment of
physical disability benefits on account of old age com-
mences, shall not be under seventy years (unless a less
age than seventy years may be authorized by the statute

law of the various States, in which event said less age may be substituted for age seventy), said benefits
 1149 herein provided for to be deducted from the face of the certificate at maturity from any sum that may be due thereunder, or otherwise, as said Board may determine, and to the end that the said members shall have the full benefit of the provisions of this paragraph, the Board is empowered to investigate all applications for benefit fully, and conclusively determine, the right of each member applying for benefit to same and the amount of same, and to make all needful agreements with said
 1150 member with respect to such payments as may be made hereunder, and all payments made hereunder to be paid out of the mortuary fund of the Fourth Class.

The Board is directed to as speedily as possible communicate with all the members of the Fourth Class whose address it may have or be able to obtain, advising them of the action of the Supreme Lodge, as set out in this section, and giving to them the various options provided for herein and advising them that on said
 1151 January 1, 1911, of the applicability to them of the table of monthly payments set out in paragraph "c" hereof, and that their payments thereafter for each month will be in accordance therewith, subject, however, to their acceptance and election in writing and adoption by them of some one of the Plans and Options provided for by the several paragraphs hereof, and upon the failure of any member to so elect and adopt some one of the Plans and Options, his payments from
 1152 and after January 1, 1911, shall be made as provided for in said paragraph "c," and any member of the Fourth Class who shall fail to pay when due said monthly payments shall thereby *ipso facto* cease to be a member and his certificate, with all rights thereunder in said Fourth Class, shall thereby terminate, subject to the provisions of the laws with reference to reinstatement.

The Board shall, in addition to the duties required of it under Section 465, Supreme Statutes, make an accounting and valuation in the Fourth Class at the close of business on the 31st day of December of each year for the purpose of ascertaining the cost of mortality and expense and making provision for the maturity of said contracts. If such accounting and valuation shall disclose a surplus after providing for mortality, expense and said future requirements, equal to or exceeding one or more monthly payments, from all members of said Fourth Class, who have been members for one full year or more, then such surplus shall be distributed to said members entitled to participate therein as herein provided, by crediting one or more monthly payments as the case may be, within three months after December 31st of the year for which the accounting and valuation is had, and any surplus not equal to the aggregate monthly payments of those entitled to participate in said accounting and valuation shall be retained by the Board, and disposed of in the next annual accounting and valuation; that the said distribution shall be on the monthly basis, so that the waiving of monthly assessments shall apply at the end of the certificate year instead of the calendar year, and in the making of said accounting the Board shall take into consideration the requirements of the expense fund as is provided for with respect to the Fifth Class in Section 505, Supreme Statutes, and shall furnish to members of the Fourth Class the statement of accounting applicable to them as is provided for to members of the Fifth Class in Section 506, Supreme Statutes.

It is hereby declared to be the purpose and intent of the Supreme Lodge to invest the said Board with every requisite power and all needful authority to carry into full effect the purposes of this section, and except the power to repeal or change any provision of this section, to do everything in respect thereto that the Supreme Lodge itself might or could do.

1157 It is hereby further provided that if it shall, at the instance of any member, or number of members, be determined in any proceeding of law or in equity in any State, that the provisions of this section, as amended, do not apply or cannot be enforced against the members residing in such State, then it is expressly declared that as to such members said Section 468, Supreme Statutes, as it exists before the adoption of this amendment, shall not be repealed, but shall exist in full force and effect as though its amendment had never been attempted, and it shall be the duty of the Board
1158 to enforce said section as to the members in such State as it exists before the adoption of this amendment, the purpose of this paragraph being to provide against a hiatus in the law and to restore to life and effectiveness the said section as it now is, if this amendment shall for any reason be held not valid as to the present members of the Fourth Class.

If any provision or paragraph of this section shall for any reason be held invalid, the remaining portions
1159 of the section shall be unaffected thereby.

Three Grades of Risks.

S. S. 469.

The membership in the Fourth and Fifth Classes shall be classified into three grades of risks, to be known as extra hazardous, hazardous and ordinary; and it is hereby made the duty of the Board to grade and classify all members in said Fourth Class, or that
1160 may hereafter be received into either the Fourth or Fifth Classes, according to their respective occupations, with reference to the hazard of the same; provided, that any change in the classification hereunder shall neither operate to increase the rate on, nor reduce the amount of any certificate of the Insurance Department now in force, except as holders of certificates now in force in said Fourth Class may hereafter change their respective occupations.

Extra Hazardous Risks.

S. S. 470.

The extra hazardous grade shall comprise all persons who are members of the said Classes, following such occupations or employments as make their risks extra hazardous; and the said Board shall compile and publish from time to time, and amend the same, as occasion may require, lists of such occupations and employments as are deemed extra hazardous; and all applicants for membership in the said Classes, and members of said Fourth Class, engaged in any of said occupations so classified as extra hazardous, shall be limited to insurance to the amount of \$1,000, and shall pay, in addition to the amount stipulated in the table of rates applicable, a monthly payment of twenty cents for each five hundred dollars of benefit.

Hazardous Risks.

S. S. 471.

The hazardous grade shall comprise all persons who are members of the said Classes following such occupations or employments as make their risks hazardous; and the said Board shall compile and publish from time to time, and amend the same as occasion may require, lists of such occupations and employments as are deemed hazardous; and all applicants for membership in the said Classes, and members of said Fourth Class, engaged in any of said occupations so classified as hazardous, shall be limited to insurance in said Classes to the amount of \$2,000.00, and shall pay, in addition to the amount stipulated in the table of rates applicable, a monthly payment of fifteen cents on a five-hundred dollar certificate, and twenty-five cents for each one thousand dollars of insurance.

Ordinary Risks.

S. S. 472.

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The ordinary grade in the said Classes shall comprise those engaged in other occupations or employments than those designated as hazardous, or extra hazardous, or which are not in the prohibited grade, and the monthly payments therefor shall be as set forth in the table applying to members of the said Classes.

Prohibited Risks.

S. S. 473.

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The prohibited grade shall comprise those persons following occupations or employments which are not deemed insurable risks by the Board. The Board shall have power to exclude from membership in said Classes those engaged in extremely hazardous occupations, and to cancel or reduce to the minimum amount the certificate of any member of said Classes who may engage in such extremely hazardous occupation.

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Change of Occupation.

S. S. 474.

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If any member shall, after the date of his application, change his occupation from that of one grade to one for which a higher rate is payable, as hereinbefore specified, he shall within thirty days from time of making such change, give written notice to the Secretary of the Board, stating such change and the new occupation engaged in, and thereupon the monthly payments of such member shall be increased accordingly; and in like manner, upon notice as aforesaid, the monthly payments shall be decreased where any such member paying the higher rates hereinbefore specified, shall change to an occupation of a grade for which a lower payment is required; provided, the Board shall be satisfied that the health of such member has not become impaired by reason of such previous occupation.

Such increase or decrease of monthly payments herein provided for shall begin with the month next following such change of occupation.

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If such member shall fail to give such notice of a change of occupation to a grade for which the higher rate is required, as hereinbefore provided, within thirty days after such change, such failure shall forthwith cause a forfeiture of the certificate held by such member, and his membership and all rights in the Insurance Department shall cease; provided, however, that if the death of any such member so changing his occupation to a grade of higher risk, shall occur within thirty days after such change, and before notice shall have been given as aforesaid, the liability of the Insurance Department shall, in case the death of such member result from, or is caused by, the increased risk of such change of occupation, in no event exceed the limit of protection provided for the grade embracing such new occupation, and if the death is not so caused, the Board shall deduct from the insurance any sums that may be due on account of the increased monthly payments applicable to such change of occupation. All statements in any application or notice relating to the occupation of an applicant or member shall be deemed warranties and material to the risk, and if untrue, shall cause a forfeiture of all rights under such membership.

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If any member shall engage in any occupation or employment classed as belonging to the prohibited grade, or if any member shall engage in a hazardous undertaking other than that now provided for under the hazardous, extra hazardous, or ordinary grades, or sojourn or reside in a country or locality where he shall be exposed to physical or climatic dangers, rendering his risk extra hazardous, such member shall immediately notify the Board upon engaging in such hazardous undertaking, or making such change of residence as above specified, and a failure to give such notice within thirty days after such event, shall forfeit such

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- certificate. In all cases where members give such notice as is required herein, the Board may annul the
 1173 certificate in question, or may reduce the amount thereof to the minimum amount for which certificates may lawfully be issued upon such hazardous risks.

Fifth Class Certificates.

S. S. 475.

- The Board is hereby authorized to issue benefit certificates in the Fifth Class and to provide for the payment of same, said certificates to be in the sums of
 1174 \$500, \$1,000, \$2,000, \$3,000, \$4,000 and \$5,000, respectively, and to be issued only upon approved applications from persons eligible to membership in the Fifth Class of the Insurance Department. The form of application for membership in the Fifth Class, and the form of report of medical examination to accompany same, and the form of benefit certificate in the Fifth Class and on the several Plans therein, shall be prescribed by the Board, and may be changed from
 1175 time to time as it may deem wise. Every condition or contract made in the Fifth Class shall be written or printed in or upon the benefit certificate, except those contained in the application, medical examination, and in the laws in force at the date of such certificate, or that may be subsequently enacted by the Supreme Lodge.

Plans Under Fifth Class.

S. S. 476.

- 1176 Each applicant for membership in the Fifth Class of the Insurance Department shall state in his application the Plan, whether "A," "B," "C" or "D," that he desires to receive his benefit certificate in, and the amount of insurance desired. He shall pay to the Secretary of the Section, or to the person securing his application, a membership fee of fifty cents for each five hundred dollars of insurance desired, and the amount of one monthly payment called for, as shown

opposite his attained age under the Plan in which he desires that his benefit certificate issue, the same to be based upon the amount of insurance applied for. He shall be rated in accordance with his age at nearest birthday to date of application for membership, and grade of risk imposed, and amount of insurance desired; and, if his application for membership is accepted, he shall continue to pay thereafter a monthly payment as provided for in the Plan in which he receives a certificate, so long as the monthly rates shown in the following table shall remain in force, except as stated in these statutes, and unless otherwise provided for by enactments of the Supreme Lodge or the Board. 1177 1178

The following table represents gross rates covering the amount of both mortuary and expense elements, and the rates are on one thousand dollars of insurance.

Payments on certificates in the sum of five hundred (\$500) dollars shall be one-half of the following rates, except where the last figure of the rates is five. In cases of this kind the rate shall be one-half the schedule rate, plus two and one-half cents. Rates on two, three, four and five thousand dollars of insurance shall be two, three, four and five times the schedule rates, respectively. In the case of members following occupations or employments graded as hazardous or extra hazardous, they shall pay, in addition to the amount required under the table, the amount required by reason of such grading. 1179

The First Column: Giving ages.

The Second Column: The monthly payment on Plan "A," or the Level Life Plan. 1180

The Third Column: The monthly payment on Plan "B," or the Twenty-Year Payment Plan.

The Fourth Column: The monthly payment on Plan "C," or the Modified Step Rate Plan.

The Fifth Column: The monthly payment on Plan "D," or the Level Plan to Age 65.

	Age	Plan "A"	Plan "B"	Plan "C"	Plan "D"
1181	21	\$1.40	\$2.05	\$1.10	\$1.15
	22	1.45	2.10	1.10	1.15
	23	1.50	2.15	1.10	1.15
	24	1.50	2.15	1.10	1.20
	25	1.55	2.20	1.10	1.20
	26	1.60	2.25	1.10	1.25
	27	1.60	2.30	1.10	1.25
	28	1.65	2.35	1.15	1.25
	29	1.70	2.40	1.15	1.30
	30	1.75	2.45	1.15	1.30
1182	31	1.80	2.50	1.15	1.30
	32	1.85	2.55	1.15	1.35
	33	1.90	2.60	1.15	1.35
	34	1.95	2.65	1.20	1.40
	35	2.00	2.70	1.20	1.40
	36	2.05	2.75	1.25	1.45
	37	2.10	2.80	1.25	1.50
	38	2.15	2.85	1.25	1.50
	39	2.25	2.90	1.25	1.55
	40	2.30	2.95	1.30	1.60
1183	41	2.40	3.05	1.30	1.65
	42	2.50	3.15	1.35	1.70
	43	2.60	3.25	1.35	1.75
	44	2.70	3.35	1.40	1.80
	45	2.80	3.45	1.45	1.85
	46	2.90	3.55	1.50	1.90
	47	3.00	3.65	1.50	1.95
	48	3.15	3.75	1.55	2.00
	49	3.30	3.85	1.60	2.05
	50	3.45	3.95	1.70	2.10
1184	51	3.60	4.10	1.75	2.20
	52	3.75	4.25	1.85	2.25
	53	3.90	4.40	1.95	2.35
	54	4.10	4.55	2.05	2.45
	55	4.25	4.70	2.15	2.50
	56	4.45	4.85	2.30	2.60

Age	Plan "A"	Plan "B"	Plan "C"	Plan "D"	
57	4.65	5.05	2.45	2.70	1185
58	4.90	5.25	2.60	2.80	
59	5.15	5.45	2.80	2.90	
60	5.40	5.70	3.00	3.00	
61	5.65	....	3.20	....
62	5.95	3.45	1186
63	6.25	....	3.70	....
64	6.60	....	4.00	....
65	6.95	....	6.95*	....
66	7.35	....	....	....
67	7.75	....	....	....
68	8.20	....	....	....
69	8.65	....	....	....
70	9.15	....	....	....
71	9.70	....	....	....
72	10.30	1187
73	10.95	....	....	....
74	11.60	....	....	....
75	12.35	....	....	....
76	13.15	....	....	....
77	14.05	....	....	....
78	15.00	....	....	....
79	16.10	....	....	....
80	17.30	....	....	....
81	18.65	1188
82	20.15	....	....	....
83	23.80	....	....	....
84	23.80	....	....	....
85	26.10	....	....	....

* Level for life thereafter at \$6.95 per month.

Members whose certificates are issued upon Plan "A," or the Level Life Plan, shall, respectively, make payment each month, so long as they remain members of said Plan "A," at the rate corresponding to their

respective ages at date of certificates issued on said Plan.

- 1189** Members whose certificates are issued upon Plan "B," or the Twenty-Year Payment Plan, shall make payments, respectively, each month, so long as they remain members of said Plan "B," until payments have been made under their respective certificates issued upon said Plan "B" for twenty full years, such payments to be at the rate corresponding to their respective ages, at date of their respective certificates issued on said Plan.
- 1190** Members whose certificates are issued upon Plan "C," or the Modified Step Rate Plan, shall make payments during the calendar year of their admission to membership on said Plan at the rate applicable to their respective ages of entry, and they shall make payments during each succeeding calendar year of their membership at their respective attained ages. That is to say, members receiving certificates on said Plan "C," whose respective age at date of admission is 43 years,
- 1191** shall pay each month, respectively, during the calendar year of their admission to membership on said Plan "C," the sum of \$1.35; and for each month during the next succeeding calendar year such members, respectively, shall pay \$1.40; and for each month during the next succeeding calendar year such members, respectively, shall pay \$1.45; and so on, for each succeeding calendar year thereafter, they shall, respectively, pay a sum each month corresponding with said rate, according to the said table of rates for the age they will attain, respectively, during such calendar year, until they have attained the age of sixty-five years, respectively, and thereafter if they desire to retain membership in the Insurance Department, they shall be transferred to Plan "A," surrendering their Plan "C" certificates and receiving Plan "A" certificates and being rated at their attained ages, and, unless so transferred, their membership in the Insurance Department shall

terminate upon said member attaining age sixty-five.
 By "attained" age in any year is meant the age the
 person has attained or will attain, on his birthday oc- 1193
 ccurring during such calendar year. Members whose
 certificates are issued upon Plan "D," or the level
 Plan to age sixty-five, shall respectively make payment
 each month so long as they remain members of said
 Plan "D," at the rate corresponding to their respective
 ages at date of their respective certificates, until such
 members attain the age of sixty-five years, respectively.
 Whenever a member of said Plan "D" attains the age
 of sixty-five years, his certificate shall thereby cease to 1194
 have any value or be of any effect, and payments under
 said certificate shall cease. Upon members of Plan
 "D" attaining the age of sixty-five years, those who
 may elect to do so shall be transferred to Plan "A,"
 rated at attained age, and, without medical examina-
 tion or expense for transfer, receive Plan "A" certifi-
 cates for so much insurance as they may transfer, and
 shall upon being transferred be treated as members of
 Plan "A." Members of Plans "C" and "D" shall 1195
 also have the right to transfer without expense or medi-
 cal examination, but at attained age, to Plan "A" at
 any time in advance of their attaining the age of sixty-
 five years. In all cases of transfers of members from
 Plans "C" and "D," either upon attaining age sixty-
 five or prior thereto, they shall surrender their old cer-
 tificates and receive new certificates in said Plan "A,"
 and the date of such transfer to said Plan "A" shall be
 treated for all purposes thereafter as the date of entry 1196
 in the Insurance Department. Provided, that any
 member of the Fifth Class who may desire to make
 twelve or more monthly payments in advance at one
 time may be permitted to do so, and the aggregate
 amount of all such monthly payments so paid in ad-
 vance shall be reduced six per cent.

Monthly and Extra Payments.

S. S. 478.

- 1197 The foregoing schedule of rates contemplates and requires twelve payments each calendar year under each Plan in the Fifth Class. The members of each Plan shall make said payments as they may be due from them, and in addition thereto shall make any extra or special monthly payments that the Board may call.

Right of Re-Adjustment Reserved.

S. S. 479.

- 1198 The right to change, increase or adjust the schedules of rates in the Fourth and Fifth Classes, respectively, or any of them, is expressly reserved to the Supreme Lodge, as is also the right to apply any such changed, increased or adjusted schedule of rates to all the members as of the date of their adoption without regard to the date of any member's certificate. This right of re-adjustment includes the right to advance members without reference to the Plan or Class of which they
- 1199 are members to their attained age at any time and apply new rates applicable thereto when deemed necessary by the Supreme Lodge to carry out the purposes of the Insurance Department.

Mortuary and Expense Funds.

S. S. 480.

- 1200 The amounts that members shall pay, on any of the Plans under the table of rates applicable to the Fifth Class, shall be divided by the Board into two separate and distinct funds, to be known, respectively, as the "Mortuary Fund of the Fifth Class" and the "Expense Fund of the Insurance Department." Such part of each monthly payment as equals the mortuary cost of carrying the risk, as computed by the American Experience Table of Mortality, figured at $3\frac{1}{2}$ per centum per annum, shall be placed in and become a part of the

Mortuary Fund of the Fifth Class and the balance shall be placed in the Expense Fund of the Insurance Department, to be used for paying the expenses of the Insurance Department. All certificates of membership in the Insurance Department shall be carried on the assessment plan or system of insurance, and the same shall be controlled by the laws applicable to the operation of the fraternal beneficiary system of life insurance of the state, territory or province where the head office of the Insurance Department is located. 1201

Fifth Class Certificates — When Incontestable. 1202

S. S. 481.

Certificates of membership in the Fifth Class shall be incontestable after three years from date of same, except for failure to pay the regular monthly payments or assessments, or on cessation of membership in the Order Knights of Pythias, or on account of fraud or misrepresentation made or practiced on the part of the member at the time of securing membership, and except for violation of the provisions of these statutes with reference to occupations, and provided, that this section shall not preclude the right of the Society to cancel certificates for the causes and in the manner in these statutes provided. 1203

Date Fifth Class Becomes Effective.

S. S. 482.

Said Fifth Class is hereby declared to have begun operation on the first day of January, A. D. 1907, and is composed of four Plans, viz.: Plans "A," "B," "C" and "D." Members of said Fifth Class shall have the right to transfer from a Plan having a lower rate of monthly contributions from members to a Plan having a higher rate of monthly contributions, without medical examination or expense, but at attained age. Such transfers from a lower rate Plan to a higher rate Plan, if made before membership in said Plan trans- 1204

- ferred from has been carried for thirty-six months, shall operate to forfeit any reserve which the transferring member may have. No other transfers within the Fifth Class from one Plan to another Plan shall be allowed. Members desiring to transfer from a higher rate Plan to a lower rate Plan shall be treated as new applicants, and members who take extended or paid-up insurance and desire to secure membership in some other Plan, or upon another certificate in said Fifth Class, shall be treated as new applicants. The Board of Control shall have full power and authority to make such rules and regulations as may be necessary to fully carry into effect the provisions of this section.

Paid-Up and Extended Insurance.

S. S. 483.

- No benefit certificate issued upon Plans "A," "B" and "D" in the Fifth Class, or either of them, shall, after all payments and assessments have been made as required under such certificate for the full period of thirty-six months be forfeited by reason of the inability of the member holding such certificate to continue to make the payments required thereunder, but in such case said certificate shall be treated as lapsed only, and it shall be commuted, and the member holding same shall be entitled to either a paid-up certificate for such an amount as the value of his said certificate at the time of such lapse, according to the American Experience Table of Mortality with interest computed at $3\frac{1}{2}$ per centum per annum (less a surrender charge of such a sum to be determined by the Board, to be equal to the current cost to the Insurance Department of securing and writing an acceptable application, and placing upon the books of the Board a similar certificate to the one lapsed), will purchase; or, at the option of the member holding such lapsed certificate, to the extension of his said certificate for the full amount thereof for such a period of time as the aforesaid value will

purchase; the single payment assumed in both cases to be calculated by the Board as aforesaid, including said surrender charge and upon said mortality table and said rate of interest. If the member holding such lapsed certificate make no selection within thirty days from the date of the lapse of such certificate as between said two options provided herein, it shall be understood that such lapsed certificate shall be extended under the rule herein stated. The application of this law to any benefit certificate shall not operate to prevent the forfeiture of any benefit certificate issued in the Fifth Class for any of the other reasons or causes of forfeiture stated in these statutes. 1209 1210

Every benefit certificate that may be commuted into a paid up certificate, or into extended insurance, under the provisions of this section shall, after commutation, be subject to all the provisions of these laws with reference to special assessments and to the right of the Supreme Lodge to change, increase or adjust the rates of the respective Plans of the Fifth Class, or any of them, and to apply such changed, increased or adjusted rates to such commuted certificates and to require the members holding same to comply with such new laws under the penalties of forfeiture applicable to all other certificates in such cases. 1211

Fourth Class Members May Transfer to Fifth Class.

S. S. 484.

From and after January 1, A. D. 1909, all members of the Fourth Class who may desire to transfer their membership to the Fifth Class shall have the right to do so, upon surrendering their benefit certificates in the Fourth Class and being rated at their attained ages at date of such transfer, upon complying with such conditions, rules and regulations as the Board of Control may adopt from time to time; and for the purpose of carrying this section into force, the Board of Control shall have full power and authority to make such rules 1212

- and regulations with respect to the transfer of members of the Fourth Class to the Fifth Class as it may deem wise and proper.
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Fifth Class Member Forfeiting, Reserve Released to Expense Fund.

S. S. 485.

- Upon a member of the Fifth Class forfeiting his insurance in said Class before he is entitled to receive extended or paid-up insurance, the Board shall charge against the reserve released by such forfeiture, a surrender charge, the same as is provided for in Section 483, Supreme Statutes, which surrender charge, or so much thereof as may be satisfied by said reserve released, shall thereupon become a part of the expense fund of the Insurance Department.
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May be Members of Both Classes.

S. S. 486.

- Members may belong to both the Fourth and Fifth Classes at the same time and may receive and hold benefit certificates in the several Plans at the same time, and may receive and hold more than one benefit certificate in one Class or Plan; provided, however, that the maximum amount of insurance in the Insurance Department which any one member may carry shall not exceed five thousand dollars.
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Increase in Amount of Fourth Class Certificates.

S. S. 487.

- Members holding less than the maximum amount of insurance in the Fourth Class may, if under fifty (50) years of age, apply for an increase in the Fourth Class not to exceed the amount limited by their occupation, by making application to the Section in which membership is held, on a special blank provided for that purpose by the Board. Such application and requirements shall be in all respects the same as that of a new
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application, and shall be forwarded to the Board with the original membership certificate attached. The applicant shall pay the required membership fee, the same 1217 as is required of new members, and the first monthly payment required under the table of rates. If accepted by the Board, a new certificate for the full amount of insurance shall be issued. The monthly payment of the member on the amount of the increase shall be in accordance with the occupation or employment and age of the applicant at the time the application for increase is made, which monthly payment shall be added to the monthly payment required under the original certificate. 1218

In like manner members of any of the Plans in the Fifth Class who might be eligible for membership therein in the first instance, at that time may apply for increase to the maximum of five thousand dollars in said Class; provided, however, that no member shall be entitled to carry an aggregate amount of insurance in the Insurance Department of more than five thousand dollars.

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Increase in Amount of Fifth Class Certificates.

S. S. 488.

Any member of the Insurance Department who is carrying insurance therein for a sum less than five thousand dollars and who may desire to increase same in the Fifth Class so that he may carry the full amount of five thousand dollars in said Fifth Class, shall be eligible to apply for such increase in the Fifth Class, and he shall be regarded, so far as such increase is concerned, as an original applicant for admission to the Insurance Department; and if accepted shall be rated upon such increase at his attained age at date of such application for increase. 1220

Decrease in Amount of Certificate.

S. S. 489.

- 1221 Members holding benefit certificates for any sum over five hundred dollars, may decrease the same to any amount desired for which a certificate is issued, by making application through the Section in which membership is held, on a form provided by the Board, and the Secretary shall forward such application, with the membership certificate attached, to the Board, who shall issue a new certificate for the amount of the benefit certificate desired. The deduction in the monthly payment shall be made for the month succeeding the one in which application for decrease is perfected.
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Beneficiaries.

S. S. 490.

- Each applicant for membership and each applicant for restoration to membership in the Insurance Department, shall designate in his application some person or persons as beneficiaries, to whom the benefit shall be paid when due, and the name or names in full, and the relationship of such person or persons so designated, shall be inserted in the certificate of membership, except in cases where the certificate is payable to "surviving widow and surviving children." The names of the wife and children may, in cases of this kind, be omitted and in the event of the death of a member in a case of this kind, the surviving wife and surviving children of the deceased shall share equally in the benefit.
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- 1224 Beneficiaries shall be limited to members of the family of, heirs of, blood relations of, affianced wife of the member, or to persons dependent upon the member for support. The interest of any person so designated, or his or her heirs, shall cease and determine in case of his or her death during the lifetime of such member. Upon the death of a member, the benefit, as specified in the certificate of membership, shall be paid by the Board by check to the person or persons designated in said certifi-

cate as entitled thereto, or, in the case of legally incapacitated persons, to their legal representatives. In case of the death of such person or persons after said benefit shall have accrued, the same shall be paid to the legal representative of such person or persons designated. In case of the death of the person or persons designated as entitled to such benefit before the same shall have accrued, it shall be paid to the widow and children of the deceased member, share and share alike; and, if there be no widow or children, nor any of them, it shall be paid to the father and mother, sisters and brothers of deceased, share and share alike; provided, that the amount of said benefit shall be held sacred, a legacy to and for said legatees, and shall never, under any circumstances, be liable for, nor be appropriated to the payment of any debts against the estate of any such member, except in the event of any such member having remained in good standing in the Insurance Department for five years, and by reason of misfortune not resulting from any criminal act or vicious habit on his part, shall be unable to meet further monthly payments and assessments or subordinate lodge dues, the lodge of which he is a member in good standing at the time may make provision to meet all payments, assessments and dues for and on behalf of such member as they may become due, taking a written agreement from the member giving such lodge a lien upon his certificate for the amount advanced in keeping such member in good standing in his subordinate lodge and in the Insurance Department, together with a reasonable rate of interest thereon. A copy of such agreement duly certified by competent authority, shall be furnished the Board within thirty days after date of execution. If none of the persons herein designated as entitled to said benefit be alive when the same shall accrue, then and in that case, all liability by reason of said certificate, shall cease and determine. Provided, further, that whenever and wherever it may be done lawfully, benefit certificates in

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- the Insurance Department may be issued and made payable to members' estates or to Pythian Homes organized or existing under the laws or proceedings of the Supreme Lodge or Grand Lodge of any Grand Domain.

Certificates Not Paid in Full.

S. S. 491.

- If the death of any member of the Fourth and Fifth Classes heretofore admitted or hereafter admitted to said Classes shall result from suicide, either voluntary or involuntary, whether such member shall be sane or insane at the time, or if such death shall be caused or superinduced by the use of intoxicating liquors, narcotics or opiates, or in consequence of a duel, or at the hands of justice, or in violation of, or attempted violation of, any criminal law, then the amount to be paid upon such member's certificate in lieu of the face amount thereof, shall be a sum only in proportion to the whole amount as the matured life expectancy is to the entire expectancy at date of said member's admission to the Insurance Department, the expectation of life based upon the American Experience Table of Mortality in force at the time of such death to govern; provided, that in case of members transferred to the Fourth Class from either of the First, Second or Third Classes, and in the case of members transferred from the Fourth to the Fifth Class, the date of such transfer shall be taken as the date of admission to the Insurance Department in computing the amount to be paid as aforesaid;
- 1231 provided, *further*, that this section shall not apply to any member of the Fifth Class who has at the time of his death been in continuous good standing in the Fifth Class for thirty-six months, consecutively, immediately preceding his death, *nor to any member of the Fourth Class who has been in continuous good standing in the Fourth Class for thirty-six months, consecutively, immediately preceding his death, and thirty-six months succeeding January 1, A. D. 1911.*

Change of Beneficiary.

S. S. 492.

Any member desiring to change his beneficiary or 1233
 beneficiaries shall make application on a form provided
 by the Board. The Secretary of the Section shall attest
 the same and forward such application with the certifi-
 cate then in force to said Board, who shall, if the change
 be in accordance with these Statutes, issue a new certifi-
 cate, containing the name or names of the substituted
 beneficiary or beneficiaries. Such change may be made
 at any time, and as often as desired; consent of the ex- 1234
 isting beneficiary shall not be required, but no change
 shall be valid, however, until its acceptance by the
 Board.

CHAPTER VIII.

*General and Miscellaneous Provisions.**Resignation of Membership.*

S. S. 500.

Any member of the Insurance Department may, in 1235
 addition to lapsing and forfeiting his benefit certificate
 therein, resign his membership by formally surrender-
 ing to the Board his certificate. Such resignation shall
ipso facto work a forfeiture of all amounts paid into
 the Insurance Department by such member, and his
 certificate shall by such surrendering become null and
 void.

Good Standing in Subordinate Lodge.

S. S. 501.

Whenever any member of the Insurance Department 1236
 withdraws from his subordinate lodge, or whenever his
 membership therein ceases from any cause other than
 by his death, his membership in the Insurance Depart-
 ment terminates and his benefit certificate therein *ipso*
facto forfeits, except that the member who takes a with-
 drawal card from his lodge, or secures a Grand Lodge
 or Supreme Lodge card, may retain his membership in

- the Insurance Department for a period of twelve (12) months by paying regularly all the payments or assessments required of him, and otherwise maintaining his good standing in the Insurance Department. Upon the deposit of such withdrawal Grand Lodge or Supreme Lodge card with another lodge, he shall at once notify the Secretary of the Section of which he is a member, and shall forward to the Board of Control a certificate signed by the Master of Finance of the lodge in which said card is deposited; provided, that if a member holding a card is unable by reason of old age or physical
- 1237 disability to connect himself with a subordinate lodge, and a certificate to that effect under the seal of the lodge is furnished by the member to the Board within thirty days after his rejection by the lodge, he shall not lose his membership in the Insurance Department, so long as he shall pay regularly the monthly payments or assessments required of him, and observe all the other provisions of the laws of the Supreme Lodge; provided, that this provision shall not operate to forfeit any
- 1238 certificate that may have been commuted into a paid up or extended insurance contract, but in all such cases the holder of any certificate so affected shall be deemed a member of the Society for the purpose of maintaining said certificate until the expiration of the period of extended insurance or maturity of the paid up certificate; and provided, further, that where any certificate entitled to be commuted into a paid up certificate or extended insurance has not already been commuted at the time of
- 1239 the happening of any cause of forfeiture mentioned in this section, then the certificate so affected shall *ipso facto* be commuted into a paid up certificate or extended insurance contract as provided in these statutes, and the rule stated in the first paragraph of this proviso shall then apply to such certificate.
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Forfeiture of Membership.

S. S. 502.

The regularly monthly payments and assessments of all members of the Insurance Department shall be due and payable to their respective Section Secretaries without notice in advance, on the first day of each and every month, and the failure to make such payment on or before the 20th day of each month, shall cause from and after such date a forfeiture of the certificate of membership and all right, title and interest such member, or his beneficiaries, may have in and to the same, and membership shall thereby cease *ipso facto*, provided that members of Plans "A," "B" and "D" in the Fifth Class entitled to the privileges and benefits of paid up or extended insurance as provided in these statutes, may take advantage of the options therein given them upon giving previous notice to the Board of Control. 1241 1242

In case of forfeiture under the above Section, membership may be regained only in the manner provided by law.

Cancellation of Forfeiture.

S. S. 503.

The Board shall have the power at any time during the calendar month in which any benefit certificate has been forfeited for non-payment of the regular monthly payments or assessments, or at any time during the calendar month immediately succeeding the month in which any such forfeiture has occurred, to cancel such forfeiture and to re-admit the former member and renew and restore his former contract upon payment of all arrearages. If any such forfeiture shall have occurred and continued to exist until the first day of the second calendar month succeeding the month in which such forfeiture has occurred, the Board of Control shall have the power, within the next thirty days after the lapse of said time, to cancel such forfeiture, and to re-admit such former member and renew and restore his former 1243 1244

- contract upon the payment of all arrearages, upon its being made to appear to the satisfaction of the Board
 1245 that such member is in good mental and physical health.

Accounting Required.

S. S. 504.

- It is hereby declared to be the policy of the Insurance Department to furnish safe, secure and permanent life protection to its members at a minimum cost upon stable plans. At the same time, the policy is also declared against the accumulation of all unnecessary surplus.
 1246 plus. To that end it shall be the duty of the Board to make an accounting and valuation in the Fifth Class, at the close of business on the 31st day of December of each year, for the purpose of ascertaining the cost of mortality and expense, and reserve required upon the insurance granted in said Fifth Class. If such accounting and valuation shall disclose a surplus (after providing for mortality, expense and reserve) equal to or exceeding one or more monthly payments from all mem-
 1247 bers who have been in said Fifth Class for one full year or more, then such surplus shall be distributed to the members of said Fifth Class entitled to participate therein, as herein provided, by crediting one or more monthly payments, as the case may be, within three months after December 31st of the year for which the accounting and valuation is had, and charging the amounts so credited against such surplus, and any surplus not equal to the aggregate monthly payments of
 1248 those entitled to participate in the said accounting and valuation shall be retained by the Board and disposed of in the next annual accounting and valuation; provided that the Board shall have the power to make said distribution of surplus on the monthly basis so that the waiving of the monthly assessments shall apply at the end of the certificate year instead of calendar year.

Expense—the Requirements for.

S. S. 505.

In order that the expense income of the Insurance Department may not be impaired by reason of crediting monthly payments under the accountings provided for in the preceding section, the Board shall take into consideration the expense requirements for the year in which a payment is to be credited by deducting and transferring from such surplus to the expense fund, a sum equal to the expense loading in the payments to be credited. 1249

Statement of Accounting.

S. S. 506.

Any member of the Fifth Class may require of, and obtain from the Board, a statement of the accounting as the same may be under the provisions of these statutes, which statement shall show in detail the facts upon which said accounting is based, but no member shall have the right to any division of any surplus fund belonging to the Fifth Class, or any Plan thereof, except as stated in these laws, nor to the return to him of any portion of same in cash, and every accounting had by the Board shall be binding and conclusive upon all members of the Insurance Department, the right of petition and review alone resting with the Supreme Lodge. 1251

Rights of Beneficiary.

S. S. 507.

Nothing in these laws, nor in the plans of insurance herein provided for, shall operate to grant any interest or right to any beneficiary of any member, nor to give any beneficiary of any living member any vested interest in any member's certificate in the Insurance Department. 1252

Special Assessments.

S. S. 508.

- 1253 Special assessments may be levied upon all members of the Insurance Department, and called by the Board when deemed necessary, and shall be governed by the same laws and rules as are the regular monthly payments, except that they shall not be payable until thirty days after call.

No Divisible Interests.

S. S. 509.

- 1254 No member of the Insurance Department shall have any divisible interest in the funds or properties of the Insurance Department, and, except as provided for in these laws with respect to the members of the Fifth Class, there shall be no apportionment of any of said funds at any time, and then only as provided for in the accounting required to be made in the Fifth Class. Except as it may appear otherwise in the accounting in the Fifth Class, no member of the Insurance Department shall have any claim whatever, during his lifetime, to any part of the funds or properties of the Insurance Department, or to have any portion of same applied to the maintenance of his certificate, and then only as these statutes expressly provide respecting the accounting and lapsing of assessments, except further in the case of members of Plans "A," "B" and "D," who may be entitled to paid-up or extended insurance in the manner and to the extent in these laws provided. *Provided,*
- 1255 *that except as may be provided by Section 468, the members of the Fourth Class shall have no divisible interest in the funds or properties of the Insurance Department, nor be entitled to any apportionment or application of the same.*
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Expectation of Life According to American Experience Table of Mortality.

S. S. 510.

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The Table of the Expectation of Life, according to the American Experience Table of Mortality, as referred to in Section 32, Chapter 6, of these statutes, is as follows:

Age	Expectation of Life No. of Years.	Age	Expectation of Life No. of Years.	
21	41.53	59	14.74	1258
22	40.85	60	14.10	
23	40.17	61	13.47	
24	39.49	62	12.86	
25	38.81	63	12.26	
26	38.12	64	11.67	
27	37.43	65	11.10	
28	36.73	66	10.54	
29	36.03	67	10.00	
30	35.33	68	9.47	1259
31	34.63	69	8.97	
32	33.93	70	8.48	
33	33.21	71	8.00	
34	32.50	72	7.55	
35	32.78	73	7.11	
36	31.07	74	6.68	
37	30.35	75	6.27	
38	29.62	76	5.88	
39	28.90	77	5.49	1260
40	28.18	78	5.11	
41	27.45	79	4.74	
42	26.22	80	4.39	
43	26.00	81	4.05	
44	25.27	82	3.71	
45	24.54	83	3.39	
46	23.81	84	3.08	
47	23.08	85	2.77	

	Age	Expectation of Life No. of Years.	Age	Expectation of Life No. of Years.
1261	48	22.36	86	2.47
	49	21.68	87	2.18
	50	20.91	88	1.91
	51	20.20	89	1.66
	52	19.49	90	1.42
	53	18.79	91	1.19
	54	18.09	92	.98
	55	17.40	93	.80
1262	56	16.73	94	.64
	57	16.05	95	.50
	58	15.39		

Modification of Certificates.

S. S. 511.

- The Board is hereby authorized and empowered to cause to be attached to all certificates of membership hereafter issued, a stipulation in writing, containing
- 1263 such modification, provision or provisions, as may be necessary to make said certificate conform to, and be in harmony with the laws of the State or Country within which the member to whom such certificate shall be issued is a resident; provided, however, that nothing in such modification, provision or provisions contained, shall in any manner increase or enlarge the liability of the Insurance Department otherwise than would have been the case if the regular certificate of usual form
- 1264 was issued. The Board shall also have power to refuse to issue any certificate to applicants residing in any state, territory or province, if such certificate in any way conflicts with the laws of such state, territory or province governing fraternal beneficiary societies.

Members of Insurance Department.

S. S. 512.

All members of the Insurance Department shall be

certificate holders therein, and all of these statutes shall be construed with reference to that fact.

Waiver of Supreme Lodge Law Not Allowed.

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S. S. 513.

The receipt and retention of payments and assessments from members by the Insurance Department shall not constitute a waiver of any law of the Supreme Lodge, or defense which might be relied on had such payments not been received and retained. No course of dealing between members and officers, whether persisted in for a long or short time, shall waive this provision, or the effect of same; all of said laws enacted by the Supreme Lodge, having been enacted by it in its representative and legislative capacity only, in which every member is a party, are intended to bind all members at all times.

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State Laws Affecting Certificates of Membership.

S. S. 514.

Contracts of insurance made in the Insurance Department shall be made with reference to the laws of the state, territory or province where the head office of said Insurance Department may be located at the time made, and all such contracts shall, without reference to the place of residence of the members, be deemed contracts of such state, territory or province where said head office is located at the time made, and to be controlled by the laws of same. In any suit at law or equity brought upon, or involving any benefit certificate issued by the Insurance Department, this rule shall apply to the exclusion of any rule or law to the contrary, and the rights of the parties claiming through or by reason of said certificate; and the obligations of the Insurance Department shall be determined by the laws of the state, province or territory where such head office was located at the time said certificate was issued.

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Composition of Expense Fund.

S. S. 515.

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There shall be but one expense fund in the Insurance Department, and it shall be known as "the Expense Fund of the Insurance Department," and shall consist of:

(a) That portion of members' payments and assessments allotted to the Expense Fund by the Supreme Lodge, or that may be included in any table of rates as an expense loading.

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(b) All membership fees, fees for withdrawal and transfer cards, duplicate certificates, change of beneficiaries and all fees for supplies.

(c) The increment from the Expense Fund that may be invested and all increment from interest earnings on the investment of the Mortuary Fund in excess of earnings of 3 1-2 per centum per annum, on such funds as may be invested.

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(d) All sums which are not specifically declared mortuary funds.

Loans.

S. S. 516.

The Board of Control may, under proper rules to be made by it, make loans to members of Plans "A," "B" and "D," of the Fifth Class, for the sole purpose of enabling them to make their monthly payments and assessments, said loans to bear interest at the rate of 5 per centum per annum, and to be first liens on the certificate upon which the loan is made. The outstanding loans on any certificate shall never be in excess of ninety per cent of the reserve required on said certificate by the American Experience Table of Mortality with interest at 3 1-2 per centum per annum. Provided, that in case of members of the Fourth Class, sixty-five years of age and over, who may desire to change to Plan "A" of the Fifth Class, and all members of Plans "C" and "D,"

upon attaining the age of sixty-five years respectively, and who thereupon transfer to Plan "A," the Board may also loan them, for the sole purpose of enabling them to make the payments required to the Fifth Class, and upon the same security, and at the same rate of interest, a similar sum, or in lieu thereof the sum of \$3 per month per \$1,000 of insurance covered by such certificate. Nothing in this section shall be obligatory upon the Board to make any such loans, and in no event shall the amount in cash of any loan that may be made hereunder leave the possession of the Board; and provided, that this section shall be considered cumulative to the other sections of these statutes conferring power upon the Board to hold and invest funds of the Insurance Department; and provided, that the loan provisions of this section shall apply only when same are lawful under the laws of the United States and of the several States.

Certification of Statutes.

S. S. 517.

A printed copy of these statutes, duly certified by the General Secretary of the Insurance Department, over his signature and under the seal of the Board, shall be received and accepted as all the laws governing the Insurance Department by all members of the Insurance Department, by their beneficiaries, by all persons claiming rights under any benefit certificate, and in evidence in any suit in law or equity in any court, but without further proof of their lawful passage, any rule of evidence to the contrary notwithstanding.

When Contract Begins.

S. S. 518.

The contract of insurance between the member and the Society shall not begin until twelve o'clock noon of the day when the benefit certificate was issued, and then the Society shall not be liable under the certificate unless, and until the applicant has paid the membership

- fee and made the first monthly payment required. In rating applicants and members, their nearest birthday to the date of their application shall be used as the basis for arriving at their age.

Laws Are a Part of Insurance Contract.

S. S. 519.

- The laws of the Order, as herein enacted, with any and all amendments thereto hereafter enacted by the Supreme Lodge, and all rules and regulations of the Board of Control, as the same exist, or may from time to time be adopted, shall be and constitute part of the contract of insurance between the members of the Insurance Department and such Department, and shall be binding upon such members.

UNITED STATES DISTRICT COURT.

NORTHERN DISTRICT OF NEW YORK.

1279

ARTHUR V. H. SMYTH,

vs.

SUPREME LODGE KNIGHTS
OF PYTHIAS.

- This is an action in equity to enjoin and restrain the defendant from cancelling or attempting to cancel a policy of insurance issued by it and delivered to the plaintiff and on which plaintiff has paid assessments for many years, but on which the defendant now demands the payment of increased assessments. The plaintiff also asks judgment that in case the defendant shall have cancelled said policy prior to the judgment or decree of the Court in the premises that it be adjudged to restore same and continue same in force at the same rates of

assessments and monthly payments as specified in the policy and fixed at the time the policy was issued.

R. J. SANSON, with Hon. H. V. BORST, of Amsterdam, N. Y., for the Plaintiff. 1281

JOHN J. MCCALL, with Hon. W. E. WARD, of Albany, N. Y., and J. GOODRICH, of Indianapolis, Ind., of Counsel, for the Defendant.

RAY, District Judge.

The true and correct name of the defendant is, Supreme Lodge Knights of Pythias, and the pleadings, etc., by stipulation in open Court on the trial were amended accordingly. The case was removed from the Supreme Court of the State of New York into the United States Court. The plaintiff is a resident and citizen of the County of Montgomery, State of New York, and the defendant is a corporation organized and existing under an Act of Congress making it a corporation of the District of Columbia, and was and is engaged in the business of insurance of its members of and through the endowment rank of said corporation. 1282 1283

On the 7th day of November, 1889, the plaintiff was, and for some time prior thereto had been a member of such corporation in good standing, and he has continued such ever since, and now is a member thereof in good standing.

The said corporation had a constitution and by-laws providing for and relating to the establishment of "An endowment rank," the constitution in section IV of article 1, defining the powers of the Supreme Lodge providing, "To grant warrants to members of the order of Knights of Pythias, duly qualified, upon proper application, for establishment of sections of the Endowment Rank, and to enact laws and regulations, of general application, to establish and govern the same." Section 6 of the said article also provides, "To create, hold and disburse the funds of the Endowment Rank, under such 1284

regulations as it may deem necessary." Section 8 of the same article says, "To issue certificates and provide
 1285 for the payment of same under the laws, rules and regulations embodied in the constitution in the sum of one thousand dollars (\$1,000), two thousand dollars (\$2,000), or three thousand dollars (\$3,000), as may be applied for under the laws of the endowment rank."

Article 2 provides for the formation of sections, and article 3 relates to membership therein and qualifications for such membership. Article 4 of the constitution reads as follows:

1286

"ARTICLE IV.

Monthly Assessments and Forfeiture of Certificates of Endowment.

1287

Section 1. Each member of the Endowment Rank shall, on presenting himself for obligation, pay to the Secretary of the Section, in accordance with his age and the amount of endowment applied for, a monthly assessment, as provided in the following table, and shall continue to pay the same amount each month thereafter as long as he remains a member of the Endowment Rank."

Then follows a "Table of monthly assessments," giving age of the member and the sum to be paid monthly under each class of certificates.

1288

Article 11, relating to "Amendments," reads as follows: "Article XI. Amendments. These laws may be altered or amended at any regular session of the Supreme Lodge Knights of Pythias of the World, by a two-thirds vote."

There are "General laws for the government of sections of the Endowment Rank," which provide among other things for officers and specify their duties, and article 12 thereof provides for "Amendments" thereto as follows: "The provisions of these general laws may be altered or amended at any regular session of the Supreme Lodge Knights of Pythias of the World by a two-

thirds vote." I have quoted from and referred to "Constitution and General Laws of the Endowment Rank Knights of Pythias of the World, adopted at the fourteenth session of the Supreme Lodge, held at Toronto, Ont., July 13 to 23, inclusive, 1886," as these were the ones given to the plaintiff herein at about the time of his application and the issue to him of his certificate. 1289

Under and pursuant to said constitution and laws, a section, No. 279, was duly established at Amsterdam, New York, and the complainant, Arthur V. H. Smyth, duly applied for membership and an endowment certificate or policy of \$3,000, by a written application dated October 26, 1889. He was born December 27, 1852, and his age at nearest birthday was then 37 years. The application blank filled out and signed by him and filed with and accepted by the defendant showed on its face in "Table monthly assessments" that the monthly assessments would be \$3. On the 7th day of November, 1889, "Certificate of Membership, Fourth Class, No. 23868," was executed by J. A. Huisey, President of Board of Control, and W. B. Kennedy, Supreme Secretary of the Endowment Rank, and November 26, 1889, the same was delivered to the complainant, Arthur V. H. Smyth, who signed the following agreement endorsed thereon, viz: "I accept this certificate of membership subject to all the conditions therein contained. 1290

ARTHUR V. H. SMYTH. 1291

Dated at Amsterdam, this 26th day of November, 1889."

Same was duly attested by the signature of Jacob L. Fredendall, Secretary of Section 279 E. R. The said certificate of membership so issued and delivered to the complainant reads as follows : 1292

"No. 23868. CERTIFICATE OF Fourth Class
MEMBERSHIP. \$3,000.

1293

Endowment Rank of the Order of KNIGHTS OF
PYTHIAS.

1294

This certifies, that Brother A. V. H. Smyth received the obligation of the endowment rank of the Order of Knights of Pythias in Section No. 279 on Nov. 2, 1889, and is a member in good standing in said Rank, and in consideration of the representations and declarations made in his application bearing date of Oct. 26, 1889, which application is made a part of this contract, and the payment of the prescribed admission fee; and in consideration of the payment hereafter to said Endowment Rank of all assessments as required, and the full compliance with all the laws governing this Rank now in force, or that may hereafter be enacted and shall be in good standing under said laws, the sum of *three thousand dollars* will be paid by the SUPREME LODGE KNIGHTS OF PYTHIAS OF THE WORLD, to his children as directed by said brother in his application, or to such other person or persons as he may subsequently direct, by change of beneficiary entered upon the records of the Supreme Secretary of the Endowment Rank, upon due notice and proof of death, and good standing in the rank at the time of death, and surrender of this certificate.

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1296

Provided, however, that the interest of any beneficiary as designated by said brother, or the interest of his or her heirs, shall cease and determine in case of the death of said beneficiary during the life time of such member, and in that case the benefit accruing under this certificate shall be paid as provided for in Article XII, section 1, of the Endowment Rank Constitution.

Provided, that if at the time of the death of brother the proceeds of one assessment on all members of the Endowment Rank, shall not be sufficient to pay in full the maximum amount of endowment held under this certificate, then there shall be paid an amount, less ten per cent for expenses, equal to the proceeds of one full assessment on all remaining members of the Endowment Rank, and the payment of such sum to the beneficiary or beneficiaries, mentioned herein, shall be in full of all claims and demands under and by virtue of this certificate. And it is understood and agreed that any violation of the within mentioned conditions, or the requirements of the laws in force governing this Rank, shall render this certificate and all claims null and void, and that the said Supreme Lodge shall not be liable for the above sum or any part thereof.

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In Witness Whereof, we have hereunto subscribed our names and affixed the seal of the Supreme Lodge Knights of Pythias of the World.

1299

Issued this 7th day of Nov. 1889, P. P. XXVI, at Chicago, Illinois, and registered in Book 2, Folio 178.

J. A. HUISEY,
President Board of Control.

Attest:

(Seal) W. B. KENNEDY,
Supreme Secretary of the Endowment Rank.

1300

I hereby accept this certificate of membership subject to all the conditions therein contained.

Signature of member ARTHUR V. H. SMYTH.

Dated at Amsterdam, this 26th day of November, 1889.

Attest:

JACOB L. FREDENDALL,
Secretary Section No. 279 E. R."

- 1301 At or about the time of his application and in any event with his certificate or policy there was delivered to the complainant a printed representation or statement signed "Board of Control, Endowment Rank Knights of Pythias," which contained the following:

"THE ENDOWMENT RANK

is under supervision and direction of a

BOARD OF CONTROL

Elected by the

- 1302 SUPREME LODGE KNIGHTS OF PYTHIAS OF THE
WORLD.

It is the only beneficial insurance department of the Knights of Pythias.

Applicants may obtain an endowment of \$1,000, \$2,000, \$3,000, \$4,000 or \$5,000.

- 1303 Beneficiaries may be either persons related to or dependent upon the member for support. A change of beneficiary, in accordance with law, may be made at any time and as often as desired.

A member is the absolute owner of his certificate of endowment, and controls its disposition as stated above.

Endowments are exempt from payment of debts of the member, being paid direct to the beneficiary, whose interests are protected by law.

- 1304 The system of the endowment rank is based upon actual cost of insurance during expectancy of life, divided, for convenience, into fixed monthly payments during the life of the applicant, in accordance with his age at date of applying for membership. These payments do not increase with increasing age, but always remain the same during good standing of the member.

To qualify, an applicant for admission to the Endowment Rank, he must not be over fifty (50)

years of age, a member in good standing of a Subordinate Lodge Knights of Pythias, and pass a satisfactory medical examination, which must be approved and accepted by the Board of Control. 1305

This also contained a "Table of Monthly Payments," showing \$3.00 to be the monthly payment of a member 37 years of age at the time of application and admission.

The complainant continued to pay not only his lodge dues but his monthly assessment of \$3.00 and also extra assessments down to 1901, or 1902, when he received a pamphlet (Exhibit E) which informed him that thereafter his monthly assessment would be \$4.80, and this he paid thereafter down to January 1, 1911, when he received from the Insurance Department of the defendant (formerly Board of Control) a notice which continued the following: 1306

"Name, A. V. H. Smyth, Certificate No. 23868, Section No. 279. Amount of Certificate \$3,000. Amount of present monthly payment \$4.80. Born, 12-27, 1852. Age at nearest birthday January 1, 1911, 58 Years. 1307

Indianapolis, Ind., 12-13, 1910.

Dear Sir and Brother:

The Supreme Lodge, Knights of Pythias, in regular convention assembled, on the 10th day of August, A. D. 1910, by section 468, Supreme Statutes, relating to the insurance department, enacted and provided that: 1308

1. (Paragraphs 'B' and 'C'). Every member of the Fourth Class on January 1, A. D. 1911, shall be rerated according to his attained age and occupation and amount of benefit provided for in his certificate, in accordance with the table of rates therein provided and his monthly rates thereafter to be as provided for by said table, unless the mem-

1309

ber shall elect to take some one of the options provided for in said Section 468. If you do not elect to take one of the options and desire to continue the amount of your present certificate for the remainder of your life, then, beginning with the month of January, 1911, and for each month thereafter, your monthly payment will be \$14.70. If you accept one of the following options, the above paragraph will not apply to you:

The options are as follows:

1310

2. (Paragraph 'D'). You may surrender your present certificate and accept a certificate in lieu thereof, and for the amount thereof, which will insure you for the term of five (5) years for the monthly payment of \$7.95, or for the term of ten (10) years for the same amount for the monthly payment of \$9.30. At the end of the five (5) or ten (10) years period, whichever you elect to accept, the certificate will terminate and you will no longer be insured under it. If you should die while the certificate is in force and before its determination, the amount thereof will be paid your beneficiary.

1311

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3. (Paragraph 'E'). Or you may elect to continue making the same payment which you now pay each month, to-wit, \$...., from and after January 1, 1911, and upon surrendering your present certificate, a new one will be issued to you for the amount of the old certificate, but it will terminate on the day of, A. D. 19...; your present rate being sufficient to give you life insurance protection until said date, but no longer. If you die within that time, the amount of the certificate, if in force, will be paid to your beneficiary, but it will expire on that date, and you will no longer be insured under it.

4. (Paragraph 'F'). Or if you so elect, you may have your present certificate sealed down to such a sum as the rates that you are now paying will provide insurance for the whole period of your life, regardless of when your death occurs, and your rate under this plan will be just what it is now, that is, \$4.80 per each month, but the amount of your certificate will be \$978.00 instead of its present amount, and if kept in force until your death, regardless of when your death occurs, the amount thereof will be paid your beneficiary. 1313

5. (Paragraph 'G') Or if you elect to retain the present certificate that you have and are unwilling to accept any of the other options, you may have a lien placed against your certificate, the amount of such lien to be deducted at the maturity of the certificate, whenever the same matures by your death, and you may continue to pay the same rate that you are now paying, to-wit, \$4.80 per each month. Under this option the lien will be \$2,022.00, and will be deducted from the face of your certificate at maturity, leaving the balance of \$978.00 to be paid your beneficiary. 1314 1315

6. (Paragraph 'H'). Or you may elect to continue the full amount of your insurance protection for the whole period of your life and to be re-rated as of your age at nearest birthday January 1, 1911, and if you are unable to make the payment of \$14.70 that will be due from you under said certificate as each monthly payment from and after January 1, 1911, and will satisfy the Board that you are unable to pay the whole of said monthly payment in cash, then you may pay in cash the sum of \$7.95 for each month and the sum of \$6.75 for each month will be charged against your certificate, together with 5 per centum per annum as interest, which said sums not so paid by you with the interest, whatever they aggregate at the time 1316

1317

of the maturity of your certificate, will be deducted from the face amount thereof. You may, if you choose, relieve your certificate of this lien, or any portion thereof, at any time, by paying the amount of same or any portion thereof.

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7. Or you may, if you choose, transfer the whole or any portion of your insurance from the Furth to the Fifth Class, such transfer to be made without expense to you and without medical examination, but in the event of such transfer you will be rerated at your attained age and in accordance with the plan in said Fifth Class to which you elect to transfer.

1319

You are required by said enactments of the Supreme Lodge to elect in writing on or before the first day of January, 1911, which of the options you will avail yourself of, and in the event you fail to make such election, your rates on January 1, 1911, will be automatically raised, as is stated in the first paragraph hereof, to the sum of \$14.70, which sum will be due from you for each month thereafter, beginning with the month of January, 1911.

1320

If you desire any further information with respect to any of these options, it will be cheerfully furnished you.

The sole purpose of the Supreme Lodge in taking the action noted above was to provide sufficient funds so that every and the last certificate may be paid at maturity, and that each member may bear his just and equitable portion of the cost of raising the requisite funds for such purposes.

From and after January 1, 1911, every certificate in the Fourth Class will be annually valued the same as certificates in the Fifth Class, and the surplus that may be accumulated will be distributed in the same way as it is done in the Fifth

Class, by the waiving of assessments, and all Fourth Class certificates, after they have been in force for three years after January 1, 1911, will be incontestable for suicide, the same as are the certificates in the Fifth Class. 1321

Please sign one of the elections herewith enclosed, all blanks of which have been filled out, and return it to the Board of Control at once. Do not sign more than one election.

Fraternally submitted,

BOARD OF CONTROL, 1322

By UNION B. HUNT,
President Insurance Department."

This was accompanied by blank forms of acceptance of "Options" tendered. The complainant did not accept either of said options, but each month thereafter duly tendered to the Secretary and Treasurer of his Lodge, the officer authorized to receive assessments, the sum of \$4.80, which such Secretary and Treasurer refused to accept, informing the complainant that he was instructed by the Supreme Lodge not to accept. Inasmuch as by the constitution and by-laws a certificate or policy will end and become of no force and effect unless the legal assessments are paid, this action was brought December 31, 1910, in effect, to compel the defendant to accept the monthly assessment of \$4.80 and continue this certificate or so-called policy in force. 1323

The case turns, as I view it, on the power of the Supreme Lodge under its constitution to increase this monthly payment or assessment from \$4.80 per month to the sum of \$14.70 per month, and in default of payment thereof treat and consider the said certificate as of no force or effect. 1324

The defendant, under the plaintiff's objections, has been allowed to give evidence tending to show that this increase of monthly assessment on the older members,

those who have held policies for a long time paying the assessments fixed at the time they became members of
 1325 the endowment class, is necessary in order to provide a fund sufficient to pay the full amount of the policies or certificates issued prior to and since that time. It may be remarked here that the increased assessment after 1901, was to create a "surplus fund," and its payment in no way amounts to a concession by the complainant that the defendant had any legal right to increase his monthly payment or assessment and in case of refusal to pay the increased assessment cancel the policy or
 1326 treat it as of no effect.

The application for the certificate and membership in the endowment class contains the following:

"READ CAREFULLY THE FOLLOWING DECLARATION AND AGREEMENT AND OBSERVE ITS IMPORT:

I declare that I am not now a member of the Endowment Rank Knights of Pythias, and have not been rejected as an applicant thereof. I declare, furthermore, that all of the above statements are true to the best of my knowledge and belief, and that I have not concealed or omitted to state anything regarding my health, past or present, affecting the expectancy of my life; and that I hereby consent and agree that any untrue statement made in this application, or to the Medical Examiner, or any concealment of facts touching my health, or expectancy of life, or for failure or neglect to pay any or all assessments and dues as prescribed by the laws of the Rank or Order, or for other causes, or voluntarily severing my connection with the Order, shall work a forfeiture to all my rights, and the rights of my heirs and beneficiaries to all benefits and privileges accruing to members of this Rank.
 1327
 1328

I hereby agree that I will punctually pay all dues and assessments for which I may become

liable, and that I will be governed, and this contract shall be controlled by all the laws, rules and regulations of the Order governing this Rank, now 1329 in force, or that may hereafter be enacted by the Supreme Lodge, Knights of Pythias of the World, or submit to the penalties therein contained. To all of which I willingly and freely subscribe.

Dated at Amsterdam, N. Y., this the 25th day of Oct., 1889.

Signature of applicant, ARTHUR V. H. SMYTH.

The defendant contends that the constitution and 1330 general laws delivered to the complainant as above stated were promulgated August 20, 1886, and were not the ones then in force, but that same were thereafter and at a meeting of the Supreme Lodge held at Cincinnati, Ohio, June 12 to 23, 1888, inclusive, repealed and that a new set of constitution and by-laws were then adopted and promulgated effective August 1, 1888. The defendant claims to have established this by the deposition of Mr. Walter O. Powers, General Secretary of the Insurance Department of the Supreme Lodge Knights of Pythias, who testified in his deposition taken May 10, 1912, as follows: 1331

"Question. You may state your name, age and place of residence.

Answer. (a) Walter O. Powers.

(b) Age 37.

(c) Indianapolis, Indiana. 1332

Question. What is your occupation?

Answer. I am the General Secretary of the Insurance Department of the Supreme Lodge Knights of Pythias.

Question. How long have you occupied that position?

Answer. Since November 15, 1910.

1333 Question. Previous to that time, if you were connected in any capacity with the Insurance Department, Supreme Lodge Knights of Pythias, state in what capacity and for how long.

Answer. For eight years previous to my selection as Secretary of the Insurance Department I was in charge of the Certificate Department of the Insurance Department.

Question. State what are your duties as General Secretary.

1334 Answer. My duties as General Secretary are to keep and have charge of all of the books and records of the Board, to receive all funds and deposit the same daily in the proper depository, and liquidate the accounts of the Insurance Department; to conduct the general correspondence with Section Secretaries and members and prepare and present to the Executive Committee all claims against the Insurance Department.

1335 Question. Are you acquainted and familiar with the books and records of the Insurance Department?

Answer. I am, not only by reason of my employment in the office since 1903, but also by reason of the fact that I have since my election as Secretary made a careful and exhaustive examination of the records and books of the Insurance Department.

1336 Question. State what records, if any, of the Supreme Lodge you have in your custody as General Secretary.

Answer. I have in my office and under my care and custody the official records and minutes of the Supreme Lodge Knights of Pythias so far as the same pertains to the Insurance Department and of all the Biennial Reports and accounts made by the Insurance Department to the Supreme Lodge since the year 1878. * * *

Question. Have you examined a copy of the plaintiff's Exhibit "C" purported to be the Constitution and General Laws of the Endowment Rank, Knights of Pythias? 1337

Answer. I have.

Question. When, if you know, was the Constitution and General Laws set out in that pamphlet promulgated?

Answer. On August 20, 1886.

Question. Were these laws at any time thereafter repealed?

Answer. They were.

1338

Question. When?

Answer. At the session of the Supreme Lodge held at Cincinnati, Ohio, June 12 to 23, inclusive, 1888, at which session a new set of Constitution and By-laws was promulgated, effective August 1, 1888.

Question. Have you in your possession, Mr. Powers, the original minutes, records and journal of the Supreme Lodge Knights of Pythias, showing the adoption and enactment of the constitution and by-laws governing the Insurance Department at the June session, 1888, of the Supreme Lodge Knights of Pythias? 1339

Answer. I have.

Counsel for defendant now hands to the Notary a pamphlet and asks Notary to mark the same defendant's Exhibit "A." The Notary marks the pamphlet defendant's Exhibit "A." 1340

Question. I hand you, Mr. Powers, the pamphlet marked defendant's Exhibit "A" and ask you to state if you know what it is and what it contains.

Answer. This pamphlet marked defendant's Exhibit "A" contains a true and correct copy of the

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constitution and by-laws adopted by the Supreme Lodge, Knights of Pythias at the June session, 1888, which Constitution and By-laws were promulgated and became effective August 1, 1888. The pamphlet contains all of the constitution and all of the by-laws in force and effective from and after August 1, 1888.

Question. By what vote was this constitution and by-laws adopted?

Answer. By a unanimous vote—107 ayes, no nays.

1342

Question. What was the total vote of the Supreme Lodge at its session in 1888?

Answer. There were one hundred seven representatives present and authorized to sit at this convention, each being entitled to one vote."

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It is contended on the one hand and denied on the other that this establishes the adoption and promulgation of a new constitution and general laws prior to the date the complainant made his application and received his certificate. It is quite certain that if adopted they were not promulgated to the section to which the complainant belonged or to him. But complainant contends that this evidence of Powers, if admitted, does not establish either the adoption or promulgation of this alleged "new set" of constitution and general laws.

1344

Section 1 of Article 4 of the alleged new constitution and laws relating to "Monthly assessments and forfeiture of certificate of endowment," reads the same as Section 1 of Article 4 of the constitution and laws given to the complainant and above quoted except that in the new constitution there is added the words "unless otherwise provided for by the Supreme Lodge Knights of Pythias of the World." In the constitution and laws given to the complainant there is no clause or provision authorizing the Board of Control to re-rate the tables of the Fourth Class, but the alleged new constitution and laws in Article 8 has the following:

"Section 17. The Board are hereby empowered and directed to re-rate the members transferred from the First, Second and Third Classes under resolutions passed by the Supreme Lodge at the Session of 1884 permitting such members to enter the Fourth Class at the age they were when becoming members of the First, Second and Third Classes. The Board is instructed to re-rate this Class of membership so as to require them to hereafter pay as of their age when becoming members of the Fourth Class, said re-rating to take effect at such dates as the Board shall prescribe, on and after the 1st day of August, 1888; and the Board is further empowered to re-rate the present tables of the Fourth Class, applying it to all members, should such action become necessary for the proper protection and perpetuity of the Rank."

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Article 10 of the alleged new general law, rules and regulations, reads: "Amendments. The provisions of these general laws may be altered or amended at any regular session of the Supreme Lodge of the Endowment Rank, Knights of Pythias of the World."

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It is evident that the witness, Walter O. Powers, who was only twelve or thirteen years of age in 1888, has no personal knowledge of what transpired in the Supreme Lodge in 1888, when it is claimed the new constitution and laws were enacted and promulgated. His statement cannot be accepted as evidence that they were either enacted or promulgated. But he says he has control and possession of the records. If so, why were the records not offered in evidence and read in evidence? Those records have not been proved or produced before the Court or even offered or read in evidence. Powers does not even say that exhibit "A" (the alleged new constitution) is a copy of anything found in the records.

1348

When the complainant, Arthur V. H. Smyth, took out his certificate he was furnished a copy of the constitution and general laws and a table of assessments on

which he relied and on which he had the right to rely in paying his money, his regular assessments, thereafter, 1349 and also a pamphlet, the authenticity of which has not been denied, stating that his assessments would always remain the same, and would not be increased with added years. His contract was that he should and would pay regular assessments as per the table found in the constitution given him, viz, \$3.00 per month. He was also to pay extra assessments for special purposes.

This corporation is organized under a law of Congress and the corporation assumed to do business and did do 1350 business in the State of New York where the subordinate lodge or section was located, the membership and certificate applied for and executed by the complainant. It is contended by the defendant that under these circumstances the decisions of the Court of Appeals in the State of New York are not controlling, but that those of the Supreme Court of the United States and of the Federal Courts are, and that under them the Complainant has no cause of action. That the Supreme Lodge had 1351 the right to amend its constitution and general laws at any time in the manner provided in the old constitution and increase assessments of the old members—re-rate them—as was done in 1910, and that all the members who had taken certificates prior to that date and paid at the old rates in force at the date of their applications and certificates are bound by such actions of the Supreme Lodge. The contention on the other hand is that this is a New York contract and governed by the de- 1352 cisions of the highest Court of the State.

In *Wright vs. The Knights of the Maccabees of the World*, 196 N. Y., 391, the application for the certificate or policy and such certificate provided that on the death of the holder an assessment on the membership should be paid to the beneficiary named on condition that the holder should have in every particular complied with the laws of the order in force or that may hereafter be adopted and the application provided that

the laws of the order "now in force or that may hereafter be adopted shall form the basis of this contract." Seven years later the by-laws were so changed without the consent of the certificate holder as to increase the assessment which such holder refused to pay. It was held that such amendment did not affect or bind the member, and that he was not obligated to pay the increased assessment. Vann, J., all concurring, in giving the opinion of the Court, said, "The question presented for decision is whether the reservation by the defendant of a general power to amend its by-laws, without specifying in what respects, authorized it to amend them in all the particulars above mentioned. In other words, can such an association amend a specified clause under a general power?" the learned judge then proceeds:

"The amendments involve not only a substantial increase in the rate of assessment, but also a substantial decrease in the amount of benefits. While the member is now required to pay more than twice as much as before, he is to receive in return materially less than before. He is deprived altogether of the benefit to which he was entitled upon reaching the age of seventy, and is deprived of a material part of the benefit to which he was entitled in case of disability. While it was specifically provided that he should 'pay at the same rate of assessment thereafter,' the rate of assessment is now more than doubled. The benefits were specified and the rate was specified and can such a contract of insurance be so amended by the insurer, under a general power, as to take away from the insured without his consent an essential part of what he specifically contracted for? If the defendant had stated in the body of the certificate that it reserved the right to amend by increasing assessments and reducing benefits, the plaintiff would have had notice of what he might expect;

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but, in that event, it is doubtful whether he would have taken out the insurance, yet the defendant is forced to claim that the contract now has precisely the same meaning and effect as if it had been drawn in that form. The general reservation doubtless authorized the defendant to amend its by-laws so as to cover subjects not therein specifically provided for and even in other respects, which would not essentially impair the contract as made. But the subjects of assessments and benefits were specifically provided for, each being defined in express terms, so that the member knew what he was bound to pay and what he was entitled to receive. After he had acted upon those specifications in the contract by paying at the rate provided thereby for seven years, the plan of insurance was changed from term to life, while the assessments were so advanced and the benefits so reduced as to make a new contract of much less value to him than the old. * * *

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"While the defendant may doubtless so amend its by-laws, for instance, as to make reasonable changes in the methods of administration, the manner of conducting its business and the like, no change can be made which will deprive a member of a substantial right conferred expressly or impliedly by the contract itself. That is beyond the power of the legislature, as well as the association, for the obligation of every contract is protected from state interference by the Federal Constitution." (See, also, *Parish vs. New York Produce Exchange*, 169 N. Y., 34; *Langan vs. Supreme Council American Legion of Honor*, 174 N. Y., 266; *Simons vs. American Legion of Honor*, 17 N. Y., 178, 263; *Dowdall vs. Catholic Mutual Benefit Association*, 196 N. Y., 405.) * * *

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"I am, personally, of the opinion that the amendment increasing the rate of assessment is

also void, for I can see no difference in principle between reducing benefits and increasing the amount to be paid for benefits. 1331

The plaintiff entered into the contract on the faith of the promise by the association that he should 'pay at the same rate thereafter so long as he remains continually in good standing in the order,' which he had the right to assume and the defendant knew that he would assume, was a covenant not to increase the rate. The certificate states that 'he is entitled to all the rights, benefits and privileges' provided by the laws of the order, 1362 which are thus made a part of the certificate. Hence the right to pay at the old rate was one of the rights provided for and that he contracted for. It was a vested right, immune from change by amendment, in the absence of a specific reservation of power to amend in that particular. On the average, such contracts would be impaired by doubling assessments to the same extent as by cutting off one-half of the benefit. The price to be 1363 paid by the plaintiff for insurance is as essential a part of his contract as the amount of insurance to be paid to him by the defendant on the maturity of the policy. Whether the one is increased or the other proportionately decreased makes no difference in principle, or in the final result. By either method the pecuniary value of the contract, which is property, would be reduced one-half. * * *

"I think that an increase in the rate of assessment falls under the same condemnation of the law as a reduction in the amount of benefits. A judgment requiring the defendant to perform according to the contract as made and not as amended, yet requiring the plaintiff to pay according to the contract as made, would contain inconsistent provisions, one of which would necessarily violate the principle upon which the other was founded." 1364

In *Dowdall vs. Supreme Council of the Catholic Mutual Benefit Association*, 196 N. Y., 405, the syllabus is :

- 1365 "The defendant, a mutual benefit life insurance association, issued to plaintiff a certificate of membership therein, upon the condition that he should 'in every particular while a member of said association comply with all the laws, rules and requirements thereof.' Plaintiff also received a printed book containing the constitution and by-laws of defendant. One of the articles of the constitution provided in substance that all members should be assessed according to their age when admitted. The question presented is whether, by subsequent amendment of the constitution or any of the rules or regulations made after the issue of the certificate, defendant may increase the rate of a single assessment against plaintiff. Held, that the covenant on the part of plaintiff that he would comply with all the laws, rules and requirements of the association refers only to such as existed at the time he entered into his contract, and that any changes or alterations thereafter made therein, or additions thereto, seeking to modify or alter said contract do not bind him."
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In *Rockwell vs. Knights Templars and Masonic Mutual Aid Association*, 134 App. Div. (N. Y.), 736, the Court held:

- 1368 "While every corporation has a right to make and change its by-laws in a manner not inconsistent with law, it cannot impair the obligation of outstanding contracts, or impose upon a party contracting with it obligations which he never assumed.

The fact that a party contracting with a corporation is a member thereof does not entitle the cor-

poration to impair the obligations of the contract by a change in its by-laws.

The courts will not permit a party to change the terms of his contract because it proves unwise or unprofitable." 1369

Kellogg, J., in giving the opinion of the court and citing *Ayers vs. Order of United Workmen*, 188 N. Y., 280, said:

"It is repugnant to the idea of a contract that one of the parties may, at his election, from time to time change the amounts which he is to receive from the other party under the contract and the consideration which he is to render to the other contracting party, and if it is possible to make such contract, the language used must permit of no other construction. (*Ayers vs. Order of United Workmen*, 188 N. Y., 280.) 1370

The period and rate table indorsed upon the plaintiff's policy became a part of it, and there is no suggestion in it, or in the policy itself, that that table may be changed. The by-laws deemed material by the defendant were made a part of the policy by endorsing them on the back thereof, and there is no suggestion therein that the defendant had the right to change its by-laws, and in fact it had no by-law permitting such change. Every corporation has the right to make and change its by-laws in a manner not inconsistent with law, but such right does not give it the power to change its written contract, or impose upon a party contracting with it obligations which he never assumed. It is said that the defendant is a member of the corporation and is, therefore, an insured and an insurer at the same time. But every contract has at least two parties who stand as separate entities, each dealing with the other at arm's length. The fact that one of the contracting parties is a stock- 1371 1372

- holder or member of a corporation does not permit the corporation by an alleged change of its by-laws to alter the terms or effect of contracts which it has already made. The fact that a contract proves unprofitable, or will bring ruin upon one of the contracting parties, is no reason why the courts can permit the party who has made such an unwise contract to change its terms at will and make for itself a more profitable contract. A member of a co-partnership who purchases property of the firm in good faith cannot be required to pay a greater consideration than that agreed upon for the reason that the contract is unprofitable to the firm, and that he is a member of the firm and is interested in its welfare."

In that case, as here, it was said that as the defendant was a foreign corporation, the decree of the court, if pronounced, could not be enforced, and of that contention the court said:

- "It is argued, however, that the Court is powerless to compel the non-resident officers of the defendant to perform the contract and to treat the plaintiff as a policy-holder. That objection refers only to the manner of enforcing the judgment after it is rendered. The court may be powerless to punish the non-resident officers for contempt if they do not observe its judgment, but while the defendant continues to do business in this State there will be little difficulty in the enforcement of a proper judgment against it."

I find it difficult to understand how it can be held that a person who takes out a certificate or so-called policy of insurance in a fraternal benefit association or society agreeing thereby to pay a certain specified sum monthly, specified therein or thereon (and also certain special assessments for specific purposes if necessary), his ap-

plication and certificate referring to the constitution and laws of the order which are presented to and accepted by him with his certificate and accompanied by a written statement or representation that his assessment will always remain the same, has assented to an increase of such monthly assessment, an increase of his burden under the contract, or a change in the terms of his contract, by agreeing that he will "punctually pay all dues and assessments for which he may become liable and that he will be governed and that the contract shall be controlled by all the laws, rules and regulations of the order, governing the members of that rank, now in force or that may hereafter be enacted." It cannot well be questioned that such a corporation as this defendant may expressly reserve the right and power to increase the monthly assessments, but this must be so explicitly and clearly stated in some part of the contract or in some paper forming a part of the contract, that the member insured is fully informed or advised that the terms of the contract he is entering into may be changed by the insurer in that respect. *Beach vs. Supreme Tent K. of M.*, 177 N. Y., 100, 105. In that case Judge Cullen, one of the ablest judges ever on the bench of this or any government, said: 1377 1378 1379

"It is quite easy for fraternal organizations, such as the defendant, if they deem the provisions for benefits to their members tentative only and desire to have them subject to such modification as the business of the orders may require, to express that in the certificate. So, in the present case, if the certificate had provided that the payments therein specified should be subject to such modifications as to amount, terms and conditions of payment and contingencies in which the same were payable as the endowment laws of the order from time to time might provide, the amendments would be applicable to existing members. 1380

- 1381 But I think that nothing less explicit than this appearing in the certificate itself should be effectual for such a purpose. Fairness to persons joining the order required such plain dealing."

See also *Langan vs. Supreme Council Am. L. of H.*, 174 N. Y., 266. In *Ayers vs. The Grand Lodge of the Ancient Order of United Workmen of the State of New York*, 188 N. Y., 280, 285, 286, the court held:

- 1382 "While a 'mutual benefit fraternity,' or fraternal insurance society, may so amend its by-laws as to make reasonable changes in the methods of administration, the manner of conducting its business and the like, no change can be made which will deprive a member of a substantial right conferred expressly or impliedly by the contract itself. That is beyond the power of the legislature as well as the association, for the obligation of every contract is protected from State interference by the Federal Constitution."

- 1383 In the opinion it is said:

- 1384 "It is well established by these authorities 'that a general power reserved either by statute or by the constitution of a society to amend its by-laws does not authorize an amendment impairing the vested rights of members.' An amendment of by-laws which form a part of a contract is an amendment of the contract itself and when such a power is reserved in general terms the parties do not mean, as the courts hold, that the contract is subject to change in any essential particular at the election of the one in whose favor the reservation is made. It would not be reasonable and hence not within their contemplation, at least in the absence of stipulations clearly specifying the subjects to be affected, that one party should have the right to make a radical change

in the contract, or one that would reduce its pecuniary value to the other. A contract which authorizes one party to change it in any respect that he chooses would in effect be binding upon the other party only, and would leave him at the mercy of the former, and we have said that human language is not strong enough to place a person in that situation. (*Industrial & General Trust, Limited, vs. Tod*, 180 N. Y., 215, 225.) 1185

While the defendant may doubtless so amend its by-laws, for instance, as to make reasonable changes in the methods of administration, the manner of conducting its business and the like, no change can be made which will deprive a member of a substantial right conferred expressly or impliedly by the contract itself. That is beyond the power of the Legislature as well as the association, for the obligation of every contract is protected from State interference by the Federal Constitution. (Art. 1, section 10.)” 1386

Fredendall, the secretary of Section No. 279, E. R., at Amsterdam, who attested and delivered the certificate or so-called policy, was the agent of this defendant. Supreme Lodge Knights of Pythias vs. Withers, 177 U. S., 260, 44 L. Ed., 762; Whiteside vs. Supreme Conclave, 82 Fed. R., 275; Knights of Pythias vs. Bridges, 39 S. W. Rep. (Tex.), 333. The last two cases cited and approved in 177 U. S. at page 274, and Campbell vs. Knights of Pythias, 168 Mass., 397, disapproved in the same case at pages 275, 276. In Indiana the same general doctrines as stated in the New York cases are held. Court of Honor vs. Rausch, 95 N. E. (Indiana), 1018. It is there said: 1387 1388

“The certificate under consideration was issued to the insured more than five years before his death. It has long been settled not only by the Courts of this State and others that amendments

1389 to by-laws, which may be adopted by societies such as appellant, cannot in any way change the terms of contracts previously made, so as to impair or modify the obligations created in contracts of insurance. Compliance with future by-laws has reference to such by-laws as may be adopted at some future time pertaining to the duties of the members, but cannot affect the rights granted such members by virtue of the contract of insurance."

1390 There is a long line of cases in the Court of Appeals of the State of New York all to the effect above stated on all the material propositions involved in this case. We turn now to the decisions of the Federal Courts.

1391 Defendant's counsel cites Supreme Lodge of Fraternal Union of America vs. Light (C. C. A., 8th Circuit), 195 Fed. R., 903, as the last word on this subject and as an authority that ought to be followed by this Court. In that case the constitution of the order prohibited its members from engaging in the occupation of saloon keepers, bartenders, or manufacturers of intoxicating liquors. By a subsequent amendment it was provided that any member who should "enter upon the manufacture or sale of malt, spirituous or vinous liquors to be used as a beverage in the capacity of proprietor, stockholder, agent or employee should forfeit all rights as a member either social or beneficial." The court held that this amendment was germane and reasonable and binding on an existing member whose contract was expressly subject to such by-laws or rules as might thereafter be adopted by the Supreme Lodge. The amendment prohibited a member from becoming the agent of a manufacturer of intoxicating liquors in that business and also prohibited a member of the order from becoming a stockholder in a corporation or company engaged in such business. In short, if a member of the order who had paid money

and had vested rights in benefits should become the agent to purchase grain or machinery for a manufacturer of intoxicants or should voluntarily or by operation of law become the owner of stock in a company or a corporation engaged in manufacturing intoxicants, he was to forfeit all his rights both social and beneficial. Conceding that a manufacturer of intoxicating liquors is exposed to perils and risks, or to temptation and danger prejudicial to health and longevity which the lodge would not insure against, I am so blind that I cannot see how holding stock in a company or a corporation engaged in manufacturing intoxicating liquors exposes the holder of such stock to any "temptation and danger prejudicial to health and longevity." I cannot agree with the Circuit Court of Appeals, Eighth Circuit, that "There was nothing radically new in the amendment of 1902" (the one referred to), nor can I concur in its statement that "it was not inconsistent with existing provisions of the members' contracts, but in substantial accord with them," when such amendment went to the extent of divesting the vested beneficial rights of an old member if he became the agent of a manufacturer of intoxicating liquors or purchased or became the owner of stock in a company or corporation engaged in that business. The court in the case cited holds the true rule to be "That a member of a fraternal beneficial organization who accepts membership subject to such by-laws and rules as the Supreme Lodge may thereafter adopt is bound by any reasonable legislation thereafter adopted." It then proceeded to hold that it is reasonable legislation to amend a constitution and by-laws prohibiting its members from "engaging in the occupation of saloon keepers, bartenders or manufacturers of intoxicating liquors" so as to prohibit its members—members prior to such amendment—from becoming the agent of such manufacturer or a stockholder in a company or corporation engaged in such manufacture and destroy their

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- vested pecuniary and beneficial interests if they did. However much the courts and judges may differ as
- 1397 to the reasonableness of such legislation, if we accept the rule stated as the true one, we must inquire whether it was reasonable legislation for the defendant here to increase the monthly assessment of this complainant and all similarly situated, and who had paid in his money for some twenty-two years on the representation that such assessment would not be increased and in accordance with the provisions of the only constitution and laws of which he had any knowledge or in-
- 1398 formation, from \$3 per month, or \$4.80 per month, to \$14.70 per month, or, at his option, reduce the value of his policy or certificate at maturity from \$3,000 to \$978. The complainant has now paid in about \$900, and if (under this alleged new or amended set of constitution and laws, he should accept the option offered and continue to pay at the old rate he would pay in (assuming he lives a few years only) considerable more than his children would get under the certificate. It
- 1399 would amount to putting his money for twenty or more years in monthly installments into the hands of this corporation for its own uses on its promise to refund to his children a part of the principal at his death. Such a proposition, if made or suggested to those who became members in 1888, or at a later date, would not have been accepted or even considered. The old members in good health and with a fair prospect of life will not consider the propositions offered or accept
- 1400 same except on compulsion and then only with the hope of eventually saving a part of the money heretofore paid in without interest. It will effect a freeze-out of the old members, who for years have paid in their money for the benefit of new members and, of course, operate to prolong the life of the corporation if effective. I regard the increased assessment unnecessary and unreasonable.

In *Fullenwider vs. The Supreme Council of the Royal League et al.*, 180 Ill., 621, it is held, three of the seven judges dissenting, that a certificate of membership which provides that the members shall be bound by the laws, rules and regulations then in force or which may thereafter be enacted by the society, sufficiently reserves the right in the society to subsequently amend then existing by-laws and increase the rates then fixed by such by-laws, the certificate itself not mentioning any rate of assessment. In that case the by-laws fixed the rates to be paid, which constantly increased with the age of the holder and ranged from \$1.34 at twenty-one years of age to \$3.44 at forty-five years of age. The amended by-law increased the rate to be paid by the complainant at his then age from \$2.62 to \$4.52 and the court held that this was a reasonable amendment or change of assessment. The court said, "It is apparent that the new by-law was adopted in the manner provided for in the laws of the society and was not an unreasonable enactment. It was enacted under a right to amend the by-laws reserved expressly in the contract, and hence it cannot be claimed it in any manner impaired any vested right." *Caldwell vs. Grand Lodge, etc., of California*, 148 Cal., 195, cited by the defendant here, in no way sustains its contention. In that case Baker took a beneficiary certificate in the order payable to the Humboldt Savings and Loan Association as Trustee of his estate. As a condition he agreed that compliance on his part with all laws, regulations and requirements which are or may be enacted by said order "is the express condition upon which I am to be entitled to participate in the beneficiary fund," etc. While this certificate was outstanding the laws were so amended as to require that one designated as beneficiary should be a member of the family, or related by blood, or, "who shall be dependent upon him." After this amendment went into effect and became operative Baker revoked his bene-

1405 fiary, said Humboldt Savings and Loan Society, and named Mrs. Caldwell. Mrs. Caldwell was in no way related to Baker, was not a member of his family, and was not dependent upon him. There was nothing in the original contract that gave Baker the right to change the beneficiary at any time without the consent of the Grand Lodge. Mrs. Caldwell, after the death of Baker, demanded payment of this certificate, which was refused. The court held:

1406 "Where the original by-laws allowed any person to be named by the member as a beneficiary, a change in the by-laws of the order requiring one to be designated, as a member of the family, or related by blood, or 'who shall be dependent upon him,' is reasonable; and after it went into effect the member had no right to name a beneficiary any other than one of the classes therein designated. * * *

1407 Where the member subsequent to the change in the by-laws surrendered his former certificate, the beneficiary in which might have been protected as against such change and took a new certificate, designating such married woman as 'dependent upon him,' by force of the amendment such designation justified the order in issuing the certificate, and was a representation upon the truth of which the validity of the contract depended, and amounted to a warranty."

1408 The Court in its opinion, said:

"It is, however, contended that as Baker became a member of the order at a time when its by-laws permitted him to have the certificate issued in favor of any person a subsequent change in the by-laws limiting the classes of persons to whom such certificate could be issued was an impairment of his contract, and thereby void as to him, and as to the certificate actually issued in favor

of this plaintiff. It is unquestionably true that in a policy of life insurance a designation of a beneficiary valid in its inception remains so, although the insurable interest or relationship of the beneficiary has ceased, unless otherwise stipulated in the contract. *Courtois vs. Grand Lodge*, 135 Cal., 557 (67 Pac., 970; 87 Am. St. Rep., 137); *Wist vs. Grand Lodge*, 22 Or., 271 (29 Pac., 610; 29 Am. St. Rep., 603). But such is not the proposition here presented. This principle would have been applicable if refusal had been made by the order after the passage of its amended by-laws to pay the certificate in favor of the Humboldt Savings and Loan Society, which was a valid certificate in favor of that institution at the time of its issuance. In this case Baker surrendered that certificate, and while the amended by-law was in force caused a new certificate to be issued to a person who under the by-law was not entitled to it. Baker had not been compelled to designate a new beneficiary; but having voluntarily undertaken so to do, could he or could he not designate a beneficiary not contemplated by the by-law then in force? We entertain no doubt that this he could not do." 1409 1410 1411

The new by-laws did not purport to change the contract as it then existed. That contract was voluntarily surrendered and a new one taken in its place after the new laws went into effect and it was of course subject to the by-laws in force at the time it was taken. 1412

Messer vs. Grand Lodge United Workmen, 180 Mass., 321, does not support the defendant's contentions here as there the certificates were silent as to the rates to be paid. The contract was that the members should have all the rights and privileges of membership with a right to participate in the beneficiary fund to the amount of \$2,000, to be paid at death on condition that the member complies with all the laws, rules

- and requirements of the order. The defendant was organized and existed under a statute of the State of
- 1413 Massachusetts. The statute was amended to expressly authorize the corporation to collect assessments from the members at different rates according to the age of members. The contention was that the corporation could not do this, and could only collect assessments at a fixed rate, the same for all members of the order without reference to their age. No question of interfering with vested contract rights was involved. The case of *Reynolds vs. Royal Arcanum*, 192 Mass., 150, is a
- 1414 case quite in point and at variance with the New York cases. If good law it sustains the contentions of the defendant here. As the case was determined largely on the force of the statutes of the State of Massachusetts, it is not decisive except in so far as it interprets those laws and determines the rights of the parties under them. *Gaines vs. Supreme Council of Royal Arcanum*, 140 Fed. R., 978, is not an authority either way. Judge Clark denied an injunction on the ground it was
- 1415 a question of Massachusetts law, and dismissed the bill without prejudice to a new suit in the State of Massachusetts. I am cited to *Wright vs. Minnesota Mutual Life Insurance Company*, 193 U. S., 657, as sustaining the defendant's contention here. However, I find nothing in the facts of the case or in the opinion of the Court that in any way tends to sustain that position. On the contrary, the facts stated show that every right of all the old members was protected and pre-
- 1416 served, and that in effect they were allowed to continue to pay in the old way and that their beneficiaries were to be paid on the basis of the original plan or contract. *Wright* became a member of the company in 1892. In 1898, amended articles of association and by-laws were adopted. Now, quoting from the case,

"The amended articles declared that the by-laws shall contain provisions which shall operate to preserve, continue, guard and protect all of the

existing rights and privileges of and promises and pledges to persons who were members at the time the amended articles became operative. 1417

Under the new articles a form of policy was issued, known as the 'guaranteed option policy,' These policies were issued to new holders, and members under the assessment plan were permitted to transfer their membership so as to receive such policies, which required the payment by the insured of a stipulated annual premium in advance."

In 1901, as authorized by an act of the legislature, the company accepted the provisions of the act "making the company a regular reserve company with a policy on which a stated premium is paid and a fixed sum is payable at death to the beneficiaries of the assured." The act referred to provided amongst other things, "that nothing herein contained shall impair or operate to impair the obligation of any contract," etc. The by-laws of the new company reorganized under the act, provided: 1418

"Section 1. To the extent necessary to provide and continue the rights and privileges of any member holding a mortuary assessment certificate, and to preserve and secure the fulfillment of all contract obligations to him, and to continue and perpetuate in the company the power and authority to levy assessments and to do and perform all and everything necessary or expedient to enable it to carry out the mortuary assessment contracts in accordance with the terms thereof and with the law and present by-laws in such cases made and provided, the present and existing by-laws shall continue in full force and effect." 1420

In short, all old contracts were to be carried out and performed according to their terms on the old plan if the holder desired and there is not a line or

- word in the case that indicates that such a corporation may increase assessments at will as was done here.
- 1421 Both the legislature and reorganized company seemed to have assumed that it could not lawfully be done. The court repeatedly stated that the existing contracts were not changed and that contract rights were not interfered with. I am also cited to *Polk vs. Mutual Reserve Fund Life Association of New York*, 207 U. S., 310, as authority for the defendant's contention here. But I fail to find in that case anything that supports the contention of the defendant which
- 1422 stated in the language of its counsel, is that "A fraternal beneficiary society has the right to increase its rates and change its plan of insurance as necessity may require for the purpose of enabling it to meet its obligations to its members."

- In the *Polk* case, *supra*, the company was originally incorporated under chapter 267 of the laws of New York of 1875. There was a reserved power in the legislature to alter, amend or repeal charters, etc.
- 1423 Section 52 of the Insurance Law of New York (chap. 38 General Laws of 1892, as amended by chap. 722, Laws of 1901), provided for the "reorganization of existing corporations and amendment of certificates." The court says, "Following strictly the provisions of this section the association accepted the provisions of the insurance law, amended its charter, and became entitled to all the privileges of the law as if it had been originally incorporated thereunder." The court then
- 1424 refers to the change made and says, "The effect of this was to broaden the business from that of merely operative and assessment life insurance to life insurance of every kind. It is conceded that what was done was within the authority conferred by the statute, and the subject for our consideration is whether any of the rights, secured to the complainants by the Constitution of the United States, has been impaired. * * *
- We answer this and the other questions upon the as-

sumption, therefore, that the old corporation was still in existence, under a new name and with added powers, but with unchanged membership and bound to perform all its existing obligations. Upon this view it is impossible to say that any of the contract obligations of the association to the complainants have been impaired by the reorganization. This was the view apparently accepted by the company, who, in its notice to its members, said, 'This reincorporation while insuring the stability of the company makes no change in your policy.' Then at page 327, the court continues:

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"The other two questions certified inquire whether the law under which the reincorporation was made, or the reincorporation and changes in power made under its provisions, are in violation of the Fourteenth Amendment to the Constitution of the United States. These questions do not require separate or detailed consideration. As applied to the facts of this case, they are practically dealt with in the discussion which has preceded. It is not suggested that any rights secured to the complainants by the Fourteenth Amendment were violated in any other manner than by the reincorporation of the Association without the consent of its members, the change in and addition to its powers, and the consequent effect upon the contract rights of the complainants and upon their relation to the corporation. But it has been shown that the contract rights of the complainant have not been affected by the reincorporation, and the same reasoning that leads to the conclusion that the changes in the charter powers, made under the reserved powers of the State, do not violate the contract clause of the Constitution are apt to show that they do not violate the Fourteenth Amendment. In fact, the only suggestion of a violation of the Fourteenth Amendment made to us is

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1429 that the reincorporation, under the circumstances of this case, deprived the complainants of their vested rights and privileges and property rights under their contracts, without due process of law. Since the incorporation has deprived the complainants of no vested rights, privileges or property, the contention fails."

1430 I had never supposed that when the legislature of a State enacts a law authorizing the incorporation of insurance companies and the right to alter, amend or repeal is expressly reserved in the act itself or by constitutional provision, that it may not do so, and if the law under which the incorporation took place is amended so as to confer new powers and privileges I can see no objection to the corporation availing itself of the amendment. So long as fixed and vested rights are not interfered with no member can complain of such action and these cases in the Supreme Court of the United States not only recognize this principle but

1431 are careful to point out that all contract rights were protected and preserved and that no existing contract was impaired. There is no suggestion in either case that such a corporation, even to preserve its existence, may increase the amount of the assessments to be paid by the assured and definitely fixed by the contract of insurance without his consent and exact same on the penalty of forfeiting his contract and all benefits earned and paid for. Order of United Commercial

1432 Travellers of America vs. Smith, 192 Fed. R., 102, is not in point as it relates to an amendment to the constitution merely defining "injuries through external, violent or accidental means" to exclude any death, disability or loss resulting from infection except when the same resulted from an open wound, and any death, disability or loss of which there was no external and visible mark on the body, the dead body not being such a mark, except in case of drowning or asphyxiation.

The former constitution provided that injuries through external, violent, or accidental means should not extend to any bodily injury of which there should be no external or visible signs. In *Green vs. Supreme Council of the Royal Arcanum et al.*, 144 App. Div. (N. Y.), 761, the court held: 1433

"Where a contract between a member and a fraternal benefit insurance association provides for the payment of a fixed sum upon the death of the member and that assessments shall be at a specified rate, neither the conditions upon which the same shall become payable can be altered, nor can the sum to be paid be reduced, nor the amount of the specified assessment increased without the consent of the member, which rule is not altered by the fact that the contract may reserve a power to amend the by-laws in purely general terms. 1434

But if there be reserved in such contract a power to amend the laws governing the association reasonably designating the subjects thereof, so that a person when applying for membership is fairly advised that the terms of the contract he is about to make may be altered in the respects referred to, subsequent changes in the by-laws may be made, if reasonable, and the change must be deemed to have been assented to by the member." 1435

In the case at bar we fail to find any reservation of power to amend in the contract of insurance which in any way designates the subjects to which amendments shall relate. The language is "these laws may be altered or amended" and "the provisions of these general laws may be altered or amended," etc. Under this language, giving it full effect, if one line or word could be amended all could be and the contract changed in its entirety. In the case last cited the benefit certificate expressly stated that the member should comply 1436

1437 with the laws that "might thereafter be enacted to govern the relief fund." This the court construed as sufficiently explicit in providing for an amendment which increased the assessments to make the relief fund.

1438 It is not questioned in the New York cases to which attention has been called at some length, that under such general language the by-laws of a corporation or of an association may be amended in those respects which go to the general management and control of the company and the government of its internal affairs. When it comes to so amending by-laws, which are a part of the contract of insurance, so as to materially affect and change the obligations of such contract and destroy rights or seriously impair rights vested we have a different question. This subject of amending by-laws, and what may and may not be done under a general power was ably, learnedly, and, I think, wisely and reasonably discussed by Parker, Ch. J., in 1439 *Parish vs. New York Produce Exchange*, 169 N. Y., 34, 45, etc., where many cases are cited and in part quoted. In *Railway Company vs. Allerton*, 18 Wall. (U. S.), 233, the charter of the corporation fixed the capital stock and then expressly stated that such capital stock "may be increased from time to time at the pleasure of the said corporation" and also expressly stated that "all the corporate powers of the said corporation shall be vested in and exercised by a Board of Directors and such officers and agents as such board shall appoint." 1440 The court held that the powers thus granted to the Board of Directors referred to the ordinary business transactions of the corporation only and did not authorize such board to increase the capital stock. I think courts should and will hold that by-laws are made primarily for governmental purposes and the proper regulation and conduct and management of the affairs of the corporation or association, and not for

the purpose of either making contracts or unmaking or changing or impairing the obligations of contracts already existing. By what percentage of the membership of these fraternal associations would it be understood that a consent to change or amend the by-laws of the company would carry a consent to change his pecuniary obligation to the association or corporation under a written contract with it? It is said in some of the cases, as a reason for holding that a general power to amend the by-laws carries the power to increase the fixed assessments of the member, that to hold otherwise would work a hardship on the new members as they would be carrying the burden of low rates of assessment paid by old members. But is it not true that the new members come in voluntarily and assume the burdens, if any, of carrying out old contracts according to their terms? There are other decisions on this question, many of them in conflict, which will be found cited in the cases to which attention has been called. I have respect for all and for the courts pronouncing them, but cannot follow them all. This court is bound by the decisions of the Supreme Court of the United States and those of the Circuit Court of Appeals in the Second Circuit. I find no controlling case in either of these courts. I think the cases in the Supreme Court of the United States to which attention has been called, fairly construed, are in perfect harmony with the cases in the Court of Appeals of the State of New York which accord with my own views of the law, or what the law ought to be. I cannot assent to the proposition that for the reason an insured member of one of these fraternal beneficial associations occupies the dual position of insurer and insured, it is said, but incorrectly, he is therefore under an obligation and impliedly promises to provide means for making all contracts good. If we adopt this contention and carry it to its legitimate conclusion the government of a State, or of the United States, may for the general

- good of all its people, when in its judgment necessary, change its contract with the citizen so as to impose on
- 1445 him onerous pecuniary obligations he never undertook to perform. He is bound to do what he promised to do in his contract with the government but no more and the government has no right to claim more or prescribe changes in his contract through its legislature or judicial departments. Should a clause be inserted in the contract whereby the citizen, a party to such a contract with the government, should in general terms agree to be bound by all laws of the United States then
- 1446 in force or that might thereafter be enacted, would he be held to consent thereby to a change in the terms of his contract with the government made by some special Act of Congress? I think such a construction would be unreasonable, oppressive and unconstitutional. True, he would be represented in Congress; true, he would be interested in having all contracts of his government performed and the life and existence of his government prolonged and its credit preserved,
- 1447 but I am of the opinion that this or these considerations would not authorize Congress to provide by law that every citizen of the United States holding a government bond for one hundred dollars or more should accept ten per cent thereof in full payment, or pay into the treasury of the United States ninety per cent. of his holdings in order that all bonds outstanding of the same issue and of all subsequent issues should be fully paid. In New York towns and counties are de-
- 1448 clared to be corporations and their citizens may contract with them. They, if taxable, pay their proportion of all taxation, but their contracts are as sacred from attack by a vote of the people of the town, unless a special provision is contained therein as are those made with a citizen of some other town or county. I dissent entirely from all the cases holding that the terms and obligations of a contract of insurance between one of these fraternal corporations and one of its mem-

bers may be in any manner changed by an amendment
 to its constitution or by-laws, unless the power is speci-
 fied in and granted by the law creating the corpora- 1449
 tion, under a general consent in the contract to be
 bound by all by-laws then in existence or that may
 thereafter be adopted. If defendant had proved by
 competent evidence that the alleged constitution and
 by-laws of 1888, had been duly adopted and put in
 force and were in force when the complainant made
 his application and received his certificate the question
 would be in the case whether or not special power to
 increase assessments was sufficiently reserved thereby. 1450
 The fact that the defendant offered in evidence no rec-
 ords of the Supreme Lodge, or excerpts therefrom, and
 failed to prove or offer evidence that the alleged new
 constitution and laws of 1888 were ever in the hands
 of its officers or members, or any of them, with the
 certain proof by complainant and the agent of defend-
 ant, Fredendall, that the constitution and laws of 1886
 are the only ones they ever saw, and are the ones given
 to complainant and sent the agent by the corporation for 1451
 distribution to members and distributed by him, satis-
 fies me that such alleged new constitution and laws
 never became operative, at least so far as complainant
 is concerned. It is true that a member of one of these
 societies is presumed to know and be bound by the con-
 stitution and by-laws in existence, but the presumption
 may be rebutted by showing that the corporation itself
 gave to the member other constitution and by-laws on
 which he acted. To hold that a corporation may dis- 1452
 tribute to its members one set of constitution and by-
 laws for their information and guidance on which such
 members act, and then hold them to the provisions of
 another set, would violate every principle of justice.

Complainant's Exhibit "D" is the statement sent
 out and received by complainant headed "Important.
 The Only Pythias Insurance." It contains the table
 referred to headed "The following table of monthly

- payments shows the cost under each age and amount of endowment applied for." This table under the age
- 1453 37 and amount applied for, \$3,000, shows monthly payment to be \$3.00. This Exhibit "D" also contains the statement, "These payments do not increase" (the words "do not increase" italicised) "with increasing age but always remain the same during good standing of the member." Mr. Powers, defendant's witness, was asked, "When, if you know, was plaintiff's Exhibit 'D' published and sent out, if it ever was published and sent out by the Supreme Lodge
- 1454 Knights of Pythias, or by the Board of Control? Ans. In the year 1894." This to me is entirely inconsistent with the claim that in 1888 an amendment to the constitution and by-laws had been adopted and was then in force permitting and authorizing an increase of the monthly assessments. I conclude that the complainant is entitled to a decree substantially as prayed for in his bill of complaint. The form may be settled at Auburn during the week of October 1,
- 1455 1912.

Endorsed: Opinion, RAY, J., filed Sept. 23, 1912.
W. S. Doolittle, Clerk.

IN THE UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF NEW YORK.

1457

ARTHUR V. H. SMYTH,
Complainant,

vs.

SUPREME LODGE KNIGHTS
OF PYTHIAS,
Defendant.

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This action was brought on for trial before the Court at the term held in Albany April, 1912, and thereafter continued to the chambers of the Court at Norwich, N. Y., and until the making of this decision on this 23rd day of September, 1912.

The parties appeared by their attorneys, presented their proofs, and arguments, and I now find and decide as

Findings of Fact.

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1. That the true and correct name of the defendant is "Supreme Lodge, Knights of Pythias." That this action was brought against the defendant under the name, "Supreme Lodge, Knights of Pythias of the World." On the trial of this action, by stipulation duly made in open Court, by counsel for the parties, the pleadings and proceedings were amended so as to state the true name of the defendant, "Supreme Lodge, Knights of Pythias."

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2. That the defendant at all the times stated in the findings herein was, and is now, a corporation organized and existing under an Act of Congress making it a corporation of the District of Columbia, and was, and is, engaged in the business of insurance of its members of and through the Endowment Rank of said corporation defendant.

3. That the plaintiff at the time the policy or certificate of membership hereinafter referred to was issued to him by defendant corporation was, and now is, a resident of the County of Montgomery, in the State of New York, and was at all of said times a member in good standing of the Order of Knights of Pythias.

4. The said corporation defendant had a constitution and by-laws adopted by it about July, 1886. That said constitution provided for the establishment of an Endowment Rank and sections thereof, the enactment of laws and regulations to govern the same and for membership therein; also to issue certificates and provide for the payment of the same in the sum of One Thousand Dollars, Two Thousand Dollars, Three Thousand Dollars, as might be applied for under the laws of the said Endowment Rank created by the defendant.

5. That article IV of said Constitution of defendant reads as follows:

ARTICLE IV.

Monthly Assessments and Forfeiture of Certificates of Endowment.

Section 1. Each member of the Endowment Rank shall on presenting himself for obligation, pay to the Secretary of the Section, in accordance with his age and the amount of endowment applied for, a monthly assessment, as provided in the following table, and shall continue to pay the same amount each month thereafter as long as he remains a member of the Endowment Rank."

Then follows a "Table of monthly assessments," giving age of the member and the sum to be paid monthly under each class of certificates.

Provision was made for amendments as follows:

"Article XI. Amendments. These laws may be altered or amended at any regular session of

the Supreme Lodge, Knights of Pythias of the World, by a two-thirds vote."

6. That under and pursuant to said constitution and by-laws of the defendant corporation, an Endowment Rank was created and a section thereof was duly established at Amsterdam, N. Y., by the defendant, and the complainant, Arthur V. H. Smyth, thereafter duly applied for membership in said section and an endowment certificate or policy of insurance of three thousand dollars by a written application dated October 26, 1889. That said application was made on a blank furnished by the defendant and was filled out and signed by the complainant and wherein he stated he was born December 27, 1852, and that his age at his nearest birthday at the date of said application was thirty-seven years. That said application contained a "table of monthly assessments" giving the sum to be paid monthly under each class of certificates at different ages, and showed on its face that the monthly assessment which the complainant would be required to pay for said amount of \$3,000, at his age, that of thirty-seven, under the policy or certificate of membership, fourth class, which he applied for, would be \$3.00. That said application was filed with and accepted by the defendant corporation. That on the 7th day of November, 1889, certificate of membership, fourth class, number 23868, was executed by J. A. Huisey, President of the Board of Control, and W. B. Kennedy, Supreme Secretary of the Endowment Rank, said corporation, and on November 26, 1889, the same was delivered to and signed by the complainant, Arthur V. H. Smyth, at Amsterdam, N. Y., and then and there became of full force and effect.

The said certificate of membership so issued and delivered to the complainant reads as follows:

"No. 23868. CERTIFICATE OF Fourth Class
MEMBERSHIP. \$3,000.

1469

Endowment Rank of the Order of KNIGHTS OF
PYTHIAS.

This certifies, that Brother A. V. H. Smyth received the obligation of the endowment rank of the order of Knights of Pythias in Section No. 279 on Nov. 2, 1889, and is a member in good standing in said Rank, and in consideration of the representations and declarations made in his application bearing date of Oct. 26, 1889, which application is made a part of this contract, and the payment of the prescribed admission fee, and in consideration of the payment hereafter to said Endowment Rank of all assessments as required, and the full compliance with all the laws governing this Rank now in force, or that may hereafter be enacted and shall be in good standing under said laws the sum of *three thousand dollars* will be paid by the SUPREME LODGE KNIGHTS OF PYTHIAS OF THE WORLD, to his children as directed by said brother in his application, or to such other person or persons as he may subsequently direct, by change of beneficiary entered upon the records of the Supreme Secretary of the Endowment Rank, upon due notice and proof of death, and good standing in the rank at the time of death, and surrender of this certificate.

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Provided, however, that the interest of any beneficiary as designated by said brother, or the interest of his or her heirs, shall cease and determine in case of the death of said beneficiary during the life time of such member, and in that case the benefit accruing under this certificate shall be paid as provided for in Article XII, section 1, of the Endowment Rank Constitution.

Provided, that if at the time of the death of said brother the proceeds of one assessment on all members of the Endowment Rank, shall not be sufficient to pay in full the maximum amount of endowment held under this certificate, then there shall be paid an amount, less ten per cent. for expenses, equal to the proceeds of one full assessment on all remaining members of the Endowment Rank, and the payment of such sum to the beneficiary or beneficiaries, mentioned herein, shall be in full of all claims and demands under and by virtue of this certificate. And it is understood and agreed that any violation of the within mentioned conditions, or the requirements of the laws in force governing this Rank, shall render this certificate and all claims null and void, and that the said Supreme Lodge shall not be liable for the above sum or any part thereof. 1473 1474

In Witness Whereof, we have hereunto subscribed our names and affixed the seal of the Supreme Lodge Knights of Pythias of the World. 1475

Issued this 7th day of Nov., 1889, P. P. XXVI, at Chicago, Illinois, and registered in Book 2, Folio 178.

J. A. HUISEY,
President Board of Control.

Attest:

(Seal) W. B. KENNEDY,
Supreme Secretary of the Endowment Rank. 1476

I hereby accept this certificate of membership subject to all the conditions therein contained.

Signature of member ARTHUR V. H. SMYTH.

Dated at Amsterdam, this 26th day of November, 1889.

Attest:

1477 JACOB L. FREDENDALL,
Secretary Section No. 279, E. R."

7. That the said Jacob L. Fredendall was secretary of the said Section No. 279, E. R., at the time of the filing of said application for said certificate by the complainant and the issuing to him of said certificate of membership, No. 23868, and ever since has been such secretary.

1478 8. That at the time the complainant made his said application for certificate of membership or policy in said section of said Endowment Rank, there was delivered to him by defendant's agents a copy of its said constitution and by-laws of 1886, and at about the same time, and at or prior to the time of the delivery of said certificate or policy, there was also delivered to the complainant by defendant's agents a printed statement in form of a circular signed "Board of Control, Endowment Rank, Knights of Pythias," which contained the following:

"THE ENDOWMENT RANK
is under supervision and direction of a
BOARD OF CONTROL
elected by the
SUPREME LODGE, KNIGHTS OF PYTHIAS OF THE
1480 WORLD.

It is the only beneficial insurance department of the Knights of Pythias.

Applicants may obtain an endowment of \$1,000, \$2,000, \$3,000, \$4,000 or \$5,000.

Beneficiaries may be either persons related to or dependent upon the member for support. A change of beneficiary, in accordance with law, may be made at any time and as often as desired.

A member is the absolute owner of his certificate of endowment, and controls its disposition as stated above.

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Endowments are exempt from payment of debts of the member, being paid direct to the beneficiary, whose interests are protected by law.

The system of the Endowment Rank is based upon actual cost of insurance during expectancy of life, divided, for convenience, into fixed monthly payments during the life of the applicant in accordance with his age at date of applying for membership. These payments do not increase with increasing age, but always remain the same during good standing of the member.

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To qualify an applicant for admission to the Endowment Rank, he must not be over fifty (50) years of age, a member in good standing of a Subordinate Lodge Knights of Pythias, and pass a satisfactory medical examination, which must be approved and accepted by the Board of Control."

That said printed statement or circular also contained a "Table of Monthly Payments," showing \$3.00 to be the monthly payment of a member thirty-seven years of age on a policy of \$3,000, at the time of application and admission as a member of said Endowment Rank.

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8. That complainant paid to defendant the sums required to become a member of said Endowment Rank and paid his lodge dues as a member of said Order of Knights of Pythias and his monthly assessments of \$3.00 as required by said policy or certificate, and also all extra assessments down to about 1901 or 1902, when he received a pamphlet which informed him that thereafter his monthly assessment would be \$4.80, and this he paid thereafter down to January 1, 1911. That he received from the Insurance Department of the defend-

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ant, formerly Board of Control, about December 15, 1910, a notice, which contained the following:

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"Name, A. V. H. Smyth, Certificate No. 23868, Section No. 279.

Amount of certificate \$3,000. Amount of present monthly payment \$4.80. Born 12-27, 1852. Age at nearest birthday January 1, 1911, 58 years.

Indianapolis, Ind., 10-13, 1910.

Dear Sir and Brother.—

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The Supreme Lodge, Knights of Pythias, in regular convention assembled, on the 10th day of August, A. D. 1910, by section 468, Supreme Statutes, relating to the insurance department, enacted and provided that:

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1. (Paragraphs 'B' and 'C'). Every member of the Fourth Class on January 1, A. D., 1911, shall be rerated according to his attained age and occupation and amount of benefit provided for in his certificate, in accordance with the table of rates therein provided, and his monthly rates thereafter to be as provided for by said table, unless the member shall elect to take some one of the options provided for in said section 468. If you do not elect to take one of the options and desire to continue the amount of your present certificate for the remainder of your life, then, beginning with the month of January, 1911, and for each month thereafter, your monthly payment will be \$14.70. If you accept one of the following options, the above paragraph will not apply to you.

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The options are as follows:

2. (Paragraph 'D'). You may surrender your present certificate and accept a certificate in lieu thereof and for the amount thereof, which will insure you for the term of five (5) years for the

monthly payment of \$7.95, or for the term of ten (10) years for the same amount for the monthly payment of \$9.30. At the end of the five (5) or ten (10) years period, whichever you elect to accept, the certificate will terminate and you will no longer be insured under it. If you should die while the certificate is in force and before its termination, the amount thereof will be paid your beneficiary. 1489

3. (Paragraph 'E'). Or you may elect to continue making the same payment which you now pay each month, to-wit: \$....., from and after January 1, 1911, and upon surrendering your present certificate, a new one will be issued to you for the amount of the old certificate, but it will terminate on the day of, A. D. 19....; your present rate being sufficient to give you life insurance protection until said date, but no longer. If you die within that time, the amount of the certificate, if in force, will be paid to your beneficiary, but it will expire on that date, and you will no longer be insured under it. 1490 1491

4. (Paragraph 'F'). Or, if you so elect, you may have your present certificate scaled down to such a sum as the rates that you are now paying will provide insurance for the whole period of your life, regardless of when your death occurs, and your rate under this Plan will be just what it is now; that is, \$4.80 per each month, but the amount of your certificate will be \$978.00 instead of its present amount, and if kept in force until your death, regardless of when death occurs, the amount thereof will be paid your beneficiary. 1492

5. (Paragraph 'G'). Or, if you elect to retain the present certificate that you have and are unwilling to accept any of the other options, you may have a lien placed against your certificate,

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the amount of such lien to be deducted at the maturity of the certificate, whenever the same matures by your death, and you may continue to pay the same rate that you are now paying, to-wit: \$4.80 per each month. Under this option the lien will be \$2,022.00 and will be deducted from the face of your certificate at maturity, leaving the balance of \$978.00 to be paid to your beneficiary.

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6. (Paragraph 'II.') Or, you may elect to continue the full amount of your insurance protection for the whole period of your life and to be re-rated as of your age at nearest birthday January 1, 1911, and if you are unable to make the payment of \$14.70 that will be due from you under said certificate as each monthly payment from and after January 1, 1911, and will satisfy the Board that you are unable to pay the whole of said monthly payment in cash, then you may pay in cash the sum of \$7.95 for each month, and the sum of \$6.75 for each month will be charged against your certificate, together with 5 per centum per annum as interest, which said sums not so paid by you with the interest, whatever they aggregate at the time of the maturity of your certificate, will be deducted from the face amount thereof. You may, if you choose, relieve your certificate of this lien, or any portion thereof, at any time, by paying the amount of same or any portion thereof.

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7. Or you may, if you choose, transfer the whole or any portion of your insurance from the Fourth to the Fifth Class, such transfer to be made without expense to you and without medical examination, but in the event of such transfer you will be rerated at your attained age and in accordance with the plan in said Fifth Class to which you elect to transfer.

You are required by said enactments of the Supreme Lodge to elect in writing on or before the first day of January, 1911, which of the options you will avail yourself of, and in the event you fail to make such election, your rates on January 1, 1911, will be automatically raised, as is stated in the first paragraph hereof, to the sum of \$14.70, which sum will be due from you for each month thereafter, beginning with the month of January, 1911. 1497

If you desire any further information with respect to any of these options, it will be cheerfully furnished you. 1498

The sole purpose of the Supreme Lodge in taking the action noted above was to provide sufficient funds so that every and the last certificate may be paid at maturity and that each member may bear his just and equitable portion of the cost of raising the requisite funds for such purposes.

From and after January 1, 1911, every certificate in the Fourth Class will be annually valued the same as certificates in the Fifth Class, and the surplus that may be accumulated will be distributed in the same way as it is done in the Fifth Class, by the waiving of assessments, and all Fourth Class certificates, after they have been in force for three years after January 1, 1911, will be incontestable for suicide, the same as are the certificates in the Fifth Class. 1499

Please sign one of the elections herewith enclosed, all blanks of which have been filled out, and return it to the Board of Control at once. Do not sign more than one election. 1500

Fraternally submitted,

BOARD OF CONTROL,

By UNION B. HUNT,

President Insurance Department."

9. This notice set forth in the last finding of fact herein was accompanied by blank forms of acceptance
 1501 of the options tendered therein. The complainant did not accept either of said options but each month thereafter duly tendered to the secretary and treasurer, the officer authorized to receive assessments, the sum of \$4.80 and which sum he continued to tender to said officer down to the time of the trial of this action, which sums such secretary and treasurer refused to accept, informing the complainant that he was instructed by the Supreme Lodge not to accept the same. That complainant also paid his lodge dues and continued in good standing in said Order to the time of the trial of this action.
 1502

10. That the increased assessments after 1901 referred to in the 8th finding of fact herein was to create a surplus fund.

11. That the complainant, Arthur V. H. Smyth, when he accepted said policy or certificate relied on the said Constitution, by-laws and statement in form a circular
 1503 furnished him by defendant that his regular assessments thereafter would always remain the same and would not be increased with added years.

12. That by the said constitution and by-laws of the defendant under which the said Endowment Rank and Section was organized and is controlled said certificate or policy, it is claimed by the defendant, will end and become of no force and effect unless the legal assessments are paid as provided therein.

1504 13. That this action was brought about December 31st, 1910, in the Supreme Court of the State of New York and was thereafter duly removed into this Court.

14. That the defendant, unless restrained by the Court, threatens and intends to cancel said policy or certificate and to nullify and destroy the same, unless the complainant surrenders his said policy or certificate, and pays to the defendant, its officers and agents, the

said increased sum of \$14.70 per month from January 1, 1911, as demanded by the said notice set forth in the 8th finding of fact herein, and thereby in and by the cancellation of said policy or certificate claimed to destroy the right and claim of the complainant and the said beneficiaries named in said policy or certificate to claim or receive the said sum of \$3,000, or any other sum from the defendant on the death of the complainant herein. 1505

15. That cancellation of said policy or certificate will tend to injure and damage the complainant and the beneficiaries named therein and affect the value of said policy or certificate and interfere with the enforcement of the collection of the amount thereof from the defendant on the death of the complainant. 1506

As Conclusions of Law.

1. That the complainant is entitled to maintain this action.

2. That the payment of the increased assessments by complainant on said policy or certificate after 1901 of \$4.80 per month did not constitute a concession by him that the defendant had any legal right to increase his monthly payments or assessments and in case of complainant's refusal to pay further increased assessments fixed by the defendant, it did not give the defendant the right to cancel the said policy or certificate or treat it as of no effect. 1507

3. That the defendant is not entitled to demand or require of the complainant the payment of assessments under said policy or certificate in excess of \$4.80 per month. 1508

4. That the defendant is not entitled to demand or require from the complainant that he accept either of the said options contained and set forth in the 8th finding of fact herein.

That the complainant is entitled to judgment herein,

1509 a. Restraining the defendant, its officers and agents, from cancelling or attempting to cancel the said policy, or certificate, issued to this complainant by the defendant.

b. That the defendant be restrained from demanding from the complainant that he pay an assessment per month on said policy or certificate in excess of \$4.80.

1510 c. That the defendant accept from the complainant the said sum of \$4.80 per month from January 1, 1911, in full payment of assessments on said policy or certificate issued to the complainant by defendant as tendered to it by complainant and continue said policy or certificate in full force and effect during the continuance of such payments.

1511 d. That in case the defendant shall have cancelled the said policy or certificate or shall have attempted to cancel the same upon its books that then the defendant restore the same and continue the same in full force and effect as in and by its provisions required on the payment by the complainant to the defendant of the said monthly assessment of \$4.80 per month.

e. That the said policy is a valid and existing obligation between the parties as is in and by its terms provided so long as the complainant shall pay to the defendant said monthly assessments of \$4.80.

1512 f. That the complainant pay to the defendant the said monthly assessments tendered by him to the defendant's secretary of \$4.80 per month from January 1, 1911, to the time of the trial of this action, April, 1912. That the complainant also pay to the defendant from said date, April, 1912, the said monthly assessment at the rate of \$4.80 per month, such payments to be made on the demand of the defendant by the complainant. That after such demand shall be made and payments made,

that thereafter monthly payments of \$4.80 be made by the complainant to the defendant and be accepted by it in full payment for the monthly assessments due under said policy or certificate. 1513

That the decree herein shall also provide, "that nothing therein contained shall prohibit the defendant from ordering assessments as authorized by Section 3, of Article VI, of the Constitution of 1886, and which reads as follows:

"Section 3. Special assessments may be made upon all members of the Endowment Rank, by the Board of Control, when necessary to meet the liabilities of the Rank. Said special assessments shall be governed by the same laws, rules and regulations as are set forth for the payment and collection of the regular Monthly Assessments, except that said special assessments shall be issued on the 15th day of the month, and shall be due and payable by the members to the Secretary of the Section, within thirty (30) days thereafter, who shall forward the same to the Supreme Secretary at once." 1514 1515

A decree is directed in accordance with these findings, with costs. The decree to be prepared and submitted to and signed by me.

GEO. W. RAY,

U. S. Judge.

Endorsed: Findings. Filed Feb. 19, 1913. W. S. Doolittle, Clerk. 1516

379

UNITED STATES DISTRICT COURT,

1517

NORTHERN DISTRICT OF NEW YORK.

ARTHUR V. H. SMYTH,
Complainant,

against

SUPREME LODGE KNIGHTS
OF PYTHIAS,
Respondent.

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The above-entitled action having been tried before the Court without a jury, and the Court having made and filed its findings in writing, wherein it decides that the complainant is entitled to judgment, with costs, to be taxed by the Clerk, and the complainant's costs having been taxed at \$.....,

Now, on motion of R. J. Sanson, attorney for the complainant, it is

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ORDERED AND ADJUDGED, in accordance with said findings, that the defendant, its officers and agents be, and they are hereby restrained from cancelling or attempting to cancel the said policy or certificate issued to this complainant by the defendant for \$3,000, about November 7, 1889, and Numbered 23868 and being a certificate of membership, fourth class, Endowment Rank of the Order of Knights of Pythias.

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And it is further ORDERED AND ADJUDGED, in accordance with said findings,

That the defendant be, and it hereby is, restrained from demanding from the complainant that he pay an assessment per month on said policy or certificate in excess of \$4.80.

That the defendant be, and it is hereby, required to accept from the complainant the said sum of \$4.80 per

month from January 1, 1911, in full payment of assessments on said policy or certificate issued to the complainant by the defendant and so tendered to it by the complainant and continue the said policy in full force and effect during the continuance of such payments. 1521

That if the defendant shall have cancelled the said policy or certificate, or shall have attempted to cancel the same upon its books, that then the defendant be, and it is hereby, required and ordered to restore the same and continue the same in full force and effect as in and by the provisions in said policy or certificate provided for and required on the payment by the complainant to the defendant of the said monthly assessment of \$4.80 per month. 1522

It is further ORDERED AND ADJUDGED in accordance with said findings that the said policy is a valid and existing obligation between the parties and is in full force and effect and is to be continued as in and by its terms provided so long as the complainant shall pay to the defendant said monthly assessments of \$4.80; that the complainant pay to the defendant the said monthly assessments tendered by him to the defendant's secretary of \$4.80 per month from January 1, 1911, to April, 1912; that the complainant also pay to the defendant from said date April, 1912, the said monthly assessment at the rate of \$4.80 per month, such payment to be made on the demand of the defendant by the complainant; that after such demand shall be made and payments made that thereafter monthly payments of \$4.80 be made by the complainant to the defendant and be accepted by it in full payment for the monthly assessments due under said policy or certificate. 1523 1524

It is further ORDERED, ADJUDGED AND DECREED in accordance with said findings that the complainant recover of the defendant the amount of his said costs and disbursements amounting to the sum of \$....., and that he have process to collect the same

It is further ORDERED, ADJUDGED AND DECREED that
 nothing herein contained shall prohibit the defendant
 1525 from ordering assessments as authorized by Section 3
 of Article VI of the Constitution of 1886, and which
 reads as follows:

“Section 3. Special assessments may be made
 upon all members of the Endowment Rank, by
 the Board of Control, when necessary to meet the
 liabilities of the Rank.

“Said special assessments shall be governed by
 the same laws, rules and regulations as are set
 1526 forth for the payment and collection of the regular
 Monthly Assessments, except that said special as-
 sessments shall be issued on the 15th day of the
 month, and shall be due and payable by the mem-
 bers to the Secretary of the Section, within thirty
 (30) days thereafter, who shall forward the same
 to the Supreme Secretary at once.”

GEO. W. RAY,

1527 *Enter.* U. S. Judge.

Endorsed: Decree. Filed Feb. 19, 1913. W. S.
 Doolittle, Clerk.

IN THE UNITED STATES DISTRICT COURT,
NORTHERN DISTRICT OF NEW YORK.

1529

ARTHUR V. H. SMYTH,
Complainant,
against
SUPREME LODGE KNIGHTS
OF PYTHIAS,
Respondent.

In Equity No.

PETITION FOR APPEAL.

1530

The above named respondent, conceiving itself aggrieved by the decree of this Court made and entered on the 19th day of February, 1913, in the above entitled cause, hereby appeals from said decree to the United States Circuit Court of Appeals for the Second Circuit for the reasons specified in the assignment of errors filed herewith, and it prays that this appeal may be allowed, and that a transcript of the records, proceedings and papers upon which said decree was duly made and entered, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Second Circuit.

Dated Albany, N. Y., July 22, 1913.

JOHN J. McCALL,
Solicitor for Respondent.

Office and Post Office Address,
No. 82 State Street,

1532

Albany, N. Y.

The foregoing petition for appeal is allowed this 6th day of August, 1913.

GEO. W. RAY,
United States District Judge.

Endorsed: Petition for allowance of appeal. Filed
Aug. 8, 1913. W. S. Doolittle, Clerk.

IN THE UNITED STATES DISTRICT COURT,
NORTHERN DISTRICT OF NEW YORK.

1533

ARTHUR V. H. SMYTH,
Complainant,

vs.

SUPREME LODGE KNIGHTS
OF PYTHIAS.
Respondent-Defendant.

1534

ASSIGNMENT OF ERRORS ON APPEAL.

Now comes the Supreme Lodge, Knights of Pythias, by its Solicitor, and having prayed an appeal to the United States Circuit Court of Appeals for the Second Circuit and from the decree of this Court made and entered the 19th day of February, 1913, in favor of the complainant and against the respondent and says that said decree is erroneous and against the just rights of said respondent for the following reasons:

1535

First. That it appears from the proofs and record in this cause that the complainant was not entitled to the relief granted in said decree or prayed for in the bill of complaint in this cause or any equitable relief.

1536

Second. It appears from the proofs and records in this cause, that the complainant had forfeited all his rights under his contract or policy of insurance by failing and neglecting to pay the premiums, dues or assessments levied and assessed against him according to the contract of insurance between the complainant and respondent from January 1, 1911.

Third. That the Court erred in holding that the contract of insurance entered into between the parties to this cause consisted of the application (Complainant's Exhibit "A"), the policy (Complainant's Exhibit "B") and the by-laws of 1886 (Complainant's Exhibit

"C") because the proofs and records in this cause show that complainant's Exhibit "C" formed no part of the contract of insurance between complainant and respondent. 1537

Fourth. That the District Court erred in directing in the decree appealed from that the defendant, its officers, agents, etc., be restrained from cancelling or attempting to cancel the policy or certificate of insurance issued by respondent to complainant Nov. 7, 1889, and numbered 23868, and erred in not denying complainant's prayer for such restraining order or injunction as demanded in the answer of respondent. 1538

Fifth. That the District Court erred in directing in the decree appealed from that the respondent be restrained and enjoined from demanding of and from the complainant an assessment on the policy of insurance of complainant in excess of \$4.80 per month, and erred in denying the prayer of respondent that it be adjudged that the complainant was not entitled to such an order restraining or enjoining respondent. 1539

Sixth. That the District Court erred in directing in the decree entered in this cause that the respondent be required to receive and accept from the complainant the sum of \$4.80 per month from Jan. 1, 1911, in full payment of assessments on his policy of insurance issued to him by respondent as tendered by complainant and continue the said policy in full force and effect during the continuance of such payments.

Seventh. That the District Court erred in directing and providing in said decree entered in this cause that if the respondent cancelled or attempted to cancel the policy or certificate of insurance issued by respondent to complainant, that respondent restore the same and continue the same in full force and effect according to the terms of said policy on the payment by complainant 1540

to respondent of said monthly assessment of \$4.80 per month.

- 1541 Eighth. That the District Court erred in adjudging and ordering in the said decree entered in this cause that said policy or certificate of insurance issued by respondent to complainant was and is a valid and existing obligation between the parties to this cause and is in full force and effect and is to be continued so long as the complainant pay to the respondent the said monthly assessments of \$4.80 and ordering that complainant pay to respondent the monthly assessments of
- 1542 \$4.80 tendered by complainant to secretary of respondent from Jan. 1, 1911, to April, 1912, and that complainant also pay to respondent from April, 1912, the monthly assessment at rate of \$4.80 per month, such payment to be made on demand of respondent of complainant, and that after such payment being made upon such demand and thereafter monthly payments of \$4.80 be made by complainant to respondent and be accepted by respondent in full payment for the monthly assessments due under said policy or certificate.
- 1543

- Ninth. That the District Court erred in the findings of fact in paragraph designated Three of the findings of the District Court in holding that the complainant was at all times from the issuing to him of the certificate or policy of insurance to the present time a member in good standing of the order of Knights of Pythias because such finding is contrary to the evidence and is not supported by the evidence and is against the weight of evidence as the proofs and the records in this cause show.
- 1544

Tenth. That the District Court erred in the findings of fact set forth in paragraph designated Four of the findings of fact filed by the District Court wherein the Court holds that the respondent had a constitution and by-laws adopted about July, 1886, which provided for the establishing of an Endowment Rank and Sec-

tion and other matters in said finding designated, because such finding is not supported by the evidence, is contrary to the evidence and against the weight of evidence and because no competent proof was offered, as to what were the by-laws, if any, adopted by the respondent in 1886. 1545

Eleventh. That the District Court erred in finding the facts set forth in paragraph designated Six of the findings of the court in this cause in holding that it was in pursuance of the said by-laws of 1886 that a section of the defendant was established at Amsterdam, N. Y., and to any other part of said findings of fact designated in paragraph No. Six, which by implication or inference or direct finding holds that the policy or certificate issued by the respondent to the complainant in any way referred by its terms or related in any way to the by-laws of 1886 referred to in the findings of fact, set forth in paragraph Four of said findings of fact, because the proofs and record in this cause show that the by-laws of 1886 offered in evidence by the complainant form no part of the contract of insurance between complainant and respondent. 1546 1547

Twelfth. That the Court erred in holding that at the time the complainant made application for certificate of membership in the Endowment Rank of respondent, there was delivered to him by the defendant's agent a copy of the by-laws and constitution of 1886 and also in holding that at or prior to the time of the delivery of said certificate or policy, to the complainant by defendant's agents there was also delivered the circular set forth in the eighth finding of fact of the findings of fact filed by the court because such finding is contrary to the evidence, is unsupported by the evidence and against the weight of evidence as the proofs and records in this cause show. 1548

Thirteenth. That the District Court erred in holding that the complainant was a member in good stand-

ing in the respondent to the time of the trial of this action as set forth in paragraph designated Nine of the findings of fact because the proofs and records in this cause show that such finding is unsupported by the evidence, is against the weight of evidence, is contrary to the evidence and contrary to law.

Fourteenth. That the Court erred in holding that the increased assessments after 1901 paid by complainant were to create a surplus fund as set forth in finding of fact in paragraph designated Ten because such finding of fact is unsupported by the evidence, is against the weight of evidence, is contrary to the evidence and contrary to law as the records and proof in this cause show.

Fifteenth. That the District Court erred in holding that the complainant when he accepted the policy of insurance relied upon the constitution, by-laws and statement in form, a circular, furnished him by the defendant that his regular assessments thereafter would always remain the same and would not be increased with added years as set forth in paragraph designated Eleven of the findings of fact filed by the Court because such finding was contrary to the evidence, unsupported by the evidence, against the weight of evidence and contrary to law as the proofs and records in this cause show.

Sixteenth. That the District Court erred in holding that the respondent intended to cancel the policy issued to complainant unless the complainant surrendered the same and paid an increased sum of \$14.70 per month, as set forth in paragraph designated Fourteen of the findings of fact filed by the court because such finding is contrary to law, against the weight of evidence, unsupported by the evidence and contrary to the evidence as the proofs and record in this cause show.

Seventeenth. That the District Court erred in the conclusion of law set forth in paragraph One of the conclusions of law filed by the Court in holding that the complainant had a right to maintain this action. 1553

Eighteenth. That the District Court erred in holding in paragraph designated Two in the conclusions of law filed by the court that the payment by the complainant on his said policy after 1901 of the increased assessment of \$4.80 a month did not constitute a concession by complainant that the defendant had a legal right to increase the monthly payments or assessments on said policy and in case of the complainant's refusal to pay further increased assessments, it did not give the respondent the right to cancel said policy. 1554

Nineteenth. That the District Court erred in holding as a conclusion of law as set forth in paragraph designated Three of the conclusion of law filed by the court that the respondent was not entitled to demand or require of the complainant any assessments in excess of \$4.80 a month. 1555

Twentieth. That the District Court erred in holding as a conclusion of law as set forth in paragraph designated Four of the conclusion of law filed by the Court that the respondent is not entitled to demand or require from the complainant that he accept either of the options set forth in the eighth finding of fact filed by the Court.

Twenty-first. That the District Court erred in holding that the complainant was entitled to the judgment set forth in the conclusions of law filed by the court to the particular portions of which error has been assigned, by assigning error to the particular parts of the decree entered in this cause which parts of the decree to which error has been assigned are the same items mentioned in the conclusion of law as being the relief 1556

to which the complainant is entitled; and error is not reassigned to avoid multiplicity.

1557

Twenty-second. That the District Court erred in receiving as evidence the pamphlet designated as Complainant's Exhibit "C," purporting to be the by-law of the respondent adopted in 1886, consisting of numerous pages of printed matter, over the objection of the respondent.

1558

Twenty-third. That the District Court erred in holding that complainant's Exhibit "C" formed any part of the contract of insurance between complainant and respondent.

1559

Twenty-fourth. That the District Court erred in holding that respondent's Exhibit "A," the same being a pamphlet consisting of numerous pages of printed matter and purporting to be the by-laws and constitution of the respondent adopted in 1888 and in force at the time the certificate of policy was issued by respondent to the complainant, was not sufficiently proven to be such by-laws and constitution of 1888 and rejecting the same as evidence.

Twenty-fifth. That the District Court erred in not holding that the contract of insurance between the complainant and the respondent consisted of the application, the policy and the by-laws of 1888 as set forth in respondent's Exhibit "A."

1560

Twenty-sixth. That the District Court erred in not holding that the respondent had a right under the contract of insurance between complainant and respondent to increase the rate of assessment upon the policy issued to complainant in the manner and for the purposes set forth in the constitution and by-laws of 1888 as contained and set forth in Exhibit "A" of the respondent.

Twenty-seventh. That the District Court erred in not holding that under the proof and record in this

cause that there was the necessity for an increase in the rates upon policy of complainant and that the increase in the rate of assessment upon the policy of the complainant as made by the respondent to take effect January 1, 1911, was a reasonable increase and that the respondent could under the contract of insurance issued to complainant lawfully demand of the complainant that he pay such increased assessment from January 1, 1911. 1561

Twenty-eighth. That the District Court erred in not holding that the failure and neglect of the complainant to pay the increased assessment of \$14.70 per month from January 1, 1911, worked a forfeiture of the policy issued by respondent to complainant and that upon such failure to make such payment upon the part of the complainant the respondent had the right to cancel said policy. 1562

Twenty-ninth. That the District Court erred in not holding that the complainant had failed and neglected to pay all lawful dues and assessments levied and assessed against his policy of insurance and had forfeited all his rights thereunder. 1563

Thirtieth. That the District Court erred in not holding that under the proofs and records in this cause that the complainant was not entitled to maintain this action and that the respondent was entitled to a decree dismissing complainant's bill upon the merits with costs.

Wherefore the respondent prays that the decree of said District Court may be reversed. 1564

JOHN J. McCALL,
Solicitor for Respondent.

The foregoing assignment of errors was presented this 6th day of August, 1913, and ordered filed.

GEO. W. RAY,
United States District Judge.

Endorsed: Assignment of Errors. Filed Aug. 8, 1913. W. S. Doolittle, Clerk.

CITATION.

1565 THE UNITED STATES OF AMERICA, SECOND JUDICIAL
CIRCUIT, ss.:

TO ARTHUR V. H. SMYTH, Greeting:

1566 YOU ARE HEREBY CITED AND ADMONISHED to be and
appear at a Sessions of the United States Circuit Court
of Appeals for the Second Circuit to be holden in the
City of New York in said Circuit on the 4th day of Sep-
tember next, pursuant to an appeal filed in the Clerk's
office of the District Court of the United States for the
Northern District of New York, wherein you are ap-
pellee and the Supreme Lodge Knights of Pythias is
appellant, to show cause if any there be why the decree
or order entered in this cause in said District Court on
the 19th day of February, 1913, and mentioned in said
appeal, should not be corrected and why speedy justice
should not be done to parties in that behalf.

1567 Given under my hand in the City of Utica in the
District and Circuit above named this 6th day of Au-
gust, in the year of our Lord one thousand nine hun-
dred and thirteen and of the independence of the United
States the one hundred and thirty-eighth.

GEO. W. RAY,

United States District Judge for the Northern District
of New York, Second Circuit.

1568 Service hereof acknowledged this 8th day of August,
1913.

ROBERT J. SANSON,
Solicitor for Complainant.

UNITED STATES OF AMERICA, NORTHERN DISTRICT OF
NEW YORK, ss.: DISTRICT CLERK'S OFFICE.

I, WILLIAM S. DOOLITTLE, Clerk of the District 1569
Court of the United States for the Northern District of
New York, do hereby certify that the foregoing pages
numbered from one to three hundred ninety-three inclu-
sive contain a true and correct transcript of the papers
mentioned in the præcipe of defendant-appellant now on
file in my said office in the case of Arthur V. H. Smyth
vs. Supreme Lodge Knights of Pythias and have been
approved by the Judge of said Court pursuant to equity
rule LXXV. 1570

In Testimony Whereof I have hereunto set my hand
and affixed the seal of the said Court at the City of Utica
in said District this day of March, A. D. 1914.

W. S. DOOLITTLE,

(L. S.)

Clerk.

United States Circuit Court of Appeals for the Second Circuit,
October Term, 1914.

Argued December 11, 1914; Decided January 12, 1915.

No. 68.

ARTHUR V. H. SMYTH, Complainant-Appellee,
vs.

THE SUPREME LODGE, KNIGHTS OF PYTHIAS, Defendant-Appellant.

Appeal from the District Court of the United States for the Northern
District of New York.

Before Lacombe, Coxe, and Rogers, Circuit Judges.

This cause comes here on appeal from a decree of the District Court, Northern District of New York, holding that a certain policy of insurance issued by defendant to complainant was in full force and effect and enjoining defendant from canceling the policy. The opinion of the District Court will be found in *F. R.*

LACOMBE, *C. J.*:

The policy in question was issued November 8, 1889 for \$3,000, complainant to pay assessment of \$3 each month. It is that kind of policy under which the fund to pay death losses consists of the assessments on survivors of the insured's class and contains a provision that if at the time of death the proceeds of one assessment on all members of the class shall not be sufficient to pay the endowment stipulated for in full, then the amount paid shall — equal to the proceeds of one full assessment on all remaining members of the class, less 10% for expenses.

Complainant paid his monthly \$3 assessments as they came due, until December, 1910, when defendant notified him that unless he surrendered his policy and accepted another containing different terms and agreements and paid \$14.70 per month instead of \$3 his policy would be cancelled. This notification was based on a clause in complainant's application which was made a part of the contract, providing that the "contract shall be controlled by all the laws, rules and regulations of the Order governing this Rank, now in force, or that may hereafter be enacted by the Supreme Lodge". The increase of assessment was provided for in amendments to the constitution and By-Laws adopted some years after complainant's insurance was effected.

The facts are stated at great length and in minute detail by Judge Ray and need not be repeated here. In the constitution as it stood in 1886 Article IV provided that each member of the Endowment Rank (insurance class) shall pay the assessment provided in a table included in the Article (\$3 for a person of complainant's then age) "each month thereafter as long as he remains a member of the En-

dowment Rank." It is contended that in 1888 the Article was amended by adding after the passage quoted supra the words: "unless otherwise provided for by the Supreme Lodge." The argument is that because the Constitution which was made a part of the contract provided that another sum than \$3 a month might be assessed on each member at the option of defendant and because the assessment had been increased as above stated complainant was bound to pay at the increased rate or forfeit his policy.

The difficulty with this syllogism is found in its major premise. In the first place the testimony offered to prove that the constitution was amended in 1888 is very unsatisfactory. The sole witness, examined in 1912, was at the time secretary of the defendant. In 1888 he was not secretary and was 13 years old; he had no personal knowledge of its affairs at that time. The original constitution provided that the constitution might be "altered or amended at any regular session of the Supreme Lodge by a two-thirds vote." The witness was examined in Indianapolis where the office of defendant was located. He stated that he had in his possession the original minutes records and journal, but no part of the minutes of the session June 12th to 23rd 1888, at which it was contended the old constitution was amended and the so-called "constitution of 1888" adopted, was put in evidence. The witness merely identified a pamphlet marked Exhibit A as being a true copy of the constitution of 1888 which he said was adopted by the Supreme Lodge at the June session of that year, "effective August 1st, 1888", by a unanimous vote. But waiving this objection and assuming that the minutes showed what the witness said they contained, something more must be shown to make this particular constitution a part of the contract. It must appear that it was promulgated and was called to the attention of applicants for insurance, at least of such applicants as asked to be shown the "laws, rules and regulations" which by their application they were agreeing to be controlled by. Which constitution was it, that of 1886 or of 1888 which was made a part of the contract with this complainant? By the one he was to pay \$3 a month "as long as he remains a member," by the other he was to pay assessment at that rate "unless otherwise provided by the Supreme Lodge." On this branch of the case the testimony is as follows:

Complainant testified that at the time he applied and was accepted he was given a little pamphlet (Exhibit C) which contains the constitution of 1886. That it was given him by defendant's agent who negotiated his application and gave him his certificate. That he had kept it in the same envelope with his certificate of membership, and he produced it. The agent testified that sometimes he handed out copies of the constitution and sometimes he did not; some applicants asked for them and some did not. That he could not now remember whether or not he gave complainant a copy. But that he was supplied from the home office with copies of the Constitution, and when he did give applicants copies, he gave them out of the latest that he had. This made out a prima facie —, which was not contradicted, but on the contrary corroborated by other proof.

Complainant at Amsterdam, N. Y., applied for insurance in Octo-

ber 1889, he was furnished by the local secretary, or agent of defendant with a form of application which he filled up signed and dated October 26th, 1889. Upon this the Home Office issued its "certificate of Insurance" dated Chicago November 7th, 1889 which was sent to Amsterdam and approved by complainant November 26th, 1889. It is contended that the Constitution of 1888, with its new provision giving power to increase rates was adopted June 1st, 1888, "effective August 1st, 1888." That same Constitution, however, prescribed several changes in the form of "certificate of Insurance"; examination of the certificate issued by the Chicago Office and given to Smyth shows that it was in the form prescribed by the Constitution of 1886 without the amendments which the Constitution of 1888 provided. If a year and more after the alleged adoption of the Constitution the Home Office was still using the Certificate forms of 1886 unchanged, it would not be surprising that its agents were still supplied only with copies of the Constitution of that year. Certainly the chance of their getting new members would be greater if applicants supposed they were joining under a Constitution which did not provide for an increase of rates.

In this connection it may be noted that complainant produced a circular D, which he testified he got at the time he made application. Defendant contends that such circular was not sent out until 1894; but it is a significant circumstance that the circular states that "payments do not increase with increasing age, but always remain the same." It seems quite unlikely that defendant would be making such representations in the circular when at the same time it was handing out copies of a Constitution which showed that the representation was untrue.

On the whole we find nothing to overcome complainant's testimony that he was asked to contract and did contract on printed representations which advised him that the Constitution of 1886 was the basis of this contract and that therefore the "power to increase" referred to in constitution of 1888 was not a part of the contract entered into between defendant and himself.

As to the effect on such a contract of the general provision that insured will be "controlled by all the laws, rules and regulations governing this rank, now in force, or that may hereafter be enacted by the Supreme Lodge" it is unnecessary to add to Judge Ray's exhaustive discussion of the authorities. In *Ayres v. Ancient Order of Workmen* 188 N. Y. 280 the Court laid down the proposition that:

"While a 'mutual benefit fraternity', or fraternal insurance society, may so amend its by-laws as to make reasonable changes in the methods of administration, the manner of conducting its business and the like, no change can be made which will deprive a member of a substantial right conferred expressly or impliedly by the contract itself. That is beyond the power of the legislature as well as the association, for the obligation of every contract is protected from State interference by the Federal Constitution."

In Judge Ray's conclusion on the facts of this case, to the same effect we fully concur.

Decree affirmed with costs.

J. P. Goodrich and J. J. McCall for the Appellant.

R. J. Sanson for the Appellee.

At a Stated Term of the United States Circuit Court of Appeals, in and for the Second Circuit, Held at the Court Rooms, in the Post Office Building, in the City of New York, on the 22nd day of January, one thousand nine hundred and fifteen.

Present: Hon. E. Henry Lacombe, Hon. Alfred C. Coxe, Hon. Henry Wade Rogers, Circuit Judges.

ARTHUR V. H. SMYTH, Complainant-Appellee,

vs.

SUPREME LODGE, KNIGHTS OF PYTHIAS, Defendant-Appellant.

Appeal from the District Court of the United States for the Northern District of New York.

This cause came on to be heard on the transcript of record from the District Court of the United States, for the Northern District of New York, and was argued by counsel.

On consideration whereof, it is now hereby ordered, adjudged and decreed that the decree of said District Court be and it hereby is affirmed with costs.

E. H. L.

A. C. C.

It is further ordered that a Mandate issue to the said District Court in accordance with this decree.

Endorsed: United States Circuit Court of Appeals, Second Circuit. A. V. H. Smyth vs. Supreme Lodge, K. of P. Order for Mandate. United States Circuit Court of Appeals, Second Circuit. Filed Jan. 26, 1915, William Parkin, Clerk.

401 United States Circuit Court of Appeals for the Second Circuit.

ARTHUR V. H. SMYTH, Complainant-Appellee,

vs.

SUPREME LODGE, KNIGHTS OF PYTHIAS, Defendant-Appellant.

To Hon. E. Henry Lacombe, United States Circuit Judge, United States Circuit Court of Appeals for the Second Circuit:

Now comes the Supreme Lodge Knights of Pythias, Appellant, by its solicitor and complains that in the record and proceedings and also in the rendition of the decree of the United States Circuit Court of Appeals for the Second Circuit, sitting at the City of New York in the State of New York, in the above styled cause on the 13th day of January, 1915, confirming the decree of the United States District Court for the Northern District of New York in

said cause manifest error has intervened to the great damage of the petitioner; that the jurisdiction of the District Court of the United States for the Northern District of New York, dependent among other things upon the fact that the above named appellant was a corporation created by an act of Congress of the United States and that the corporate powers conferred upon the said appellant corporation as bestowed and granted to said appellant by said act of Congress were questioned and its corporate authority as so conferred upon it by the Act of Congress incorporating the appellant was brought into question in the above entitled action; that the amount involved in the above entitled cause and the matter in controversy exceeds the sum of One Thousand Dollars and that the above cause is not one in which the jurisdiction of the Circuit Court of Appeals is made final.

That the above action was brought by the appellee against above named appellant to permanently enjoin the appellant from cancelling a certain life insurance policy issued by the appellant to appellee on account of the refusal of the appellee to pay an increased premium thereon and the decree affirmed by the United States Circuit Court of Appeals for the Second Circuit did grant unto the above named appellee injunctive relief prayed for in the bill filed by the appellee and the appellant has made no attempt to cancel said policy until the final determination of the action.

That the appellant herein offers a bond or undertaking in the sum of One thousand dollars, conditioned as the law directs, to perfect this appeal.

Wherefore, petitioner prays for allowance of the appeal to the end that the cause may be carried to the Supreme Court of the United States and for such other process as is required to perfect the appeal prayed for to the end that the error therein may be corrected, and that a transcript of the record and proceedings and papers upon which the decree appealed from was made duly authenticated may be sent to the Supreme Court of the United States.

Dated Albany, N. Y., January 8th, 1916.

JOHN J. McCALL,
Solicitor for Appellant.

100 State Street, Albany, N. Y.

And now, to wit: On January 8th, 1916, it is ordered that the appeal be allowed as prayed for.

E. HENRY LACOMBE,
*United States Circuit Judge, United States Circuit
Court of Appeals for the Second Circuit.*

(Endorsed:) United States Circuit Court of Appeals for the Second Circuit. Arthur V. H. Smyth, Complainant-Appellee, vs. Supreme Lodge Knights of Pythias, Defendant-Appellant. Petition for and Allowance of Appeal. John J. McCall, Attorney for Def't-Appellant. Office and Post-Office Address, 100 State Street, Albany, N. Y. United States Circuit Court of Appeals, Second Circuit. Filed Jan. 8, 1916. William Parkin, clerk.

Assignment of Errors on Appeal.

United States Circuit Court of Appeals for the Second Circuit.

ARTHUR V. H. SMYTH, Complainant-Appellee,

vs.

SUPREME LODGE, KNIGHTS OF PYTHIAS, Defendant-Appellant.

And now comes Supreme Lodge Knights of Pythias, by its solicitor, and having pray- and appeal to the United States Supreme Court from the decree of the United States Circuit Court of Appeals for the Second Circuit made and entered the 13th day of January, 1915, confirming and affirming a decree of the United States District Court for the Northern District of New York entered the 19th day of February, 1913, in favor of the above named complainant and against the above named appellant, and says that said decree so appealed from is erroneous and against the just rights of the said appellant for the following reasons:

First. That the United States Circuit Court of Appeals for the Second Circuit erred in refusing to reverse the decree of the United States District Court for the Northern District of New York entered in the above entitled cause on the 19th day of February, 1913, by reason of the fact that the proofs and entire record did show that the complainant and appellee was not entitled to the relief granted in said decree and prayed for in the bill of the complainant in this cause or any equitable relief.

Second. That it appears from the proofs and records in this cause that the complainant and appellee above named had forfeited all his rights under his contract or policy of insurance by failing and neglecting to pay the premiums, dues and assessments levied against him from January 1st, 1911, and that the United States Circuit Court of Appeals erred in not reversing the decree of the United States District Court for the Northern District of New York entered February 19th, 1913, and in not dismissing the bill of complaint of the above named appellee for this reason.

Third. That the said United States Circuit Court of Appeals erred in holding that the contract of insurance entered into between the parties to this cause consisted of the application (Complainant's Exhibit "A") the policy (Complainant's Exhibit "B") and the by-laws of 1886 (Complainant's Exhibit "C") because the proofs and records in this cause show that Complainant's Exhibit "C" formed no part of the contract of insurance between the complainant-appellee and the defendant-appellant.

Fourth. That the United States Circuit Court of Appeals erred in affirming the decree of the United States District Court for the Northern District of New York entered on the 19th day of February, 1913, wherein it was provided that the defendant and appellant be restrained from canceling or attempting to cancel the policy of insurance issued to appellee, dated November 7th, 1889.

Fifth. That the United States Circuit Court of Appeals erred

in affirming the decree of the United States District Court for the Northern District of New York entered in the above entitled cause on the 19th day of February, 1913, wherein it was provided that the above named appellant be enjoined and restrained from demanding of the above named appellee on the policy of insurance in the suit any greater assessment than \$4.80.

Sixth. That the United States Circuit Court of Appeals for the Second Circuit erred in affirming the decree of the United States District Court for the Northern District of New York wherein it was required of the appellant that it receive and accept from the complainant the sum of \$4.80 a month from January 1st, 1911, in full payment of assessments on his policy of insurance issued to him and to continue said policy in full force and effect during the continuance of such payments.

Seventh. That the United States Circuit Court of Appeals erred in affirming the decree of the United States District Court for the Northern District of New York entered February 19th, 1913, wherein it was provided that in the event that the appellant cancelled or attempted to cancel the certificate of insurance issued to the above named appellee that the appellant restore same and continue same in full force and effect upon the payment by the appellee to appellant of the monthly assessments of \$4.80.

Eighth. That the United States Circuit Court of Appeals erred in affirming the decree of the United States District Court of New York entered February 19th, 1913, wherein it was duly decreed and adjudged that the policy of insurance issued by appellant to appellee was at the time of entry of such decree and is a valid obligation between the parties and was to be continued in full force and effect so long as the above named appellee pay to the appellant the monthly assessments of \$4.80 and so much of said decree ordering and directing the appellee to pay to the appellant the monthly assessments of \$4.80 from January 1st, 1911, to April, 1912, and that the appellee also pay to appellant from April, 1912, a monthly assessment at the rate of \$4.80 upon the demand of the appellant and that after such payment has been made that thereafter monthly assessments of \$4.80 by the appellee to appellant be accepted by appellant in full payment for the monthly assessments due under said policy of insurance in suit.

Ninth. That the United States Circuit Court of Appeals for the Second Circuit erred in affirming so much of the findings of fact of the United States District Court for the Northern District of New York filed in the above entitled cause and transmitted with the record on appeal which held that the above named appellee was at all times from the issuing to him of the certificate or policy of insurance to the time of the entry of said decree a member in good standing of the order of Knights of Pythias because such finding is contrary to evidence and not supported by the evidence and being against the weight of evidence, as the proofs and records in this cause will show.

Tenth. That the United States Circuit Court of Appeals for the Second Circuit erred in construing as the contract between the

parties any papers other than the application (Complainant's Exhibit "A") policy (Complainant's Exhibit "B") and the by-laws of 1888 (Defendant's Exhibit "A").

Eleventh. That the United States Circuit Court of Appeals erred in construing as part of the contract between the parties to the above entitled action Complainant's Exhibit "C," being the by-laws of 1886, in any manner, either by estoppel or otherwise.

Twelfth. That the United States Circuit — of Appeals for the Second Circuit erred in affirming the decree of the United States District — of New York entered February 19th, 1913, by reason of the fact that the proofs and records in this cause show that the appellant had the right under contract of insurance between the appellee and the appellant to increase the rate of assessment under the policy issued to appellee in the manner and for the purposes set forth in the constitution and by-laws of 1888, as contained and set forth in Exhibit "A" of the Appellant.

Thirteenth. That the United States Circuit Court of Appeals for the Second Circuit erred in affirming the decree of the United States District Court for the Northern District of New York entered February 19th, 1913, by reason of the fact that under the proofs and records in this cause there was necessity for the increase of assessment and that the increase in the assessment as made by the appellant to take effect January 1st, 1911, was a reasonable one and that the appellant could under the contract of insurance so issued to appellee lawfully demand that the appellee pay an increased assessment from January 1st, 1911.

Fourteenth. That the United States Circuit Court of Appeals for the Second Circuit erred in affirming the decree of the United States District Court for the Northern District of New York entered February 19th, 1913, because the proofs and records in this cause show that the failure and neglect of the above named appellee to pay the increased assessment of \$14.70 from January worked a forfeiture of the policy issued by appellant to appellee and that upon such failure to make such payment the appellant had the right to cancel the said policy.

Fifteenth. That the United States Circuit Court of Appeals erred in affirming the decree of the District Court for the Northern District of New York in that the proofs and records in this cause show that the above named appellee had failed and neglected to pay all dues and assessments levied or assessed against his policy of insurance and had forfeited all his rights thereunder.

Sixteenth. That the United States Circuit Court of Appeals for the Second Circuit erred in affirming the decree of the United States District — for the Northern District of New York entered February 19th, 1913, because the records and proofs in this cause show that the above named appellee was not entitled to maintain this action and that the above named appellant was entitled to decree dismissing the bill of the above named appellee upon the merits, with costs.

Seventeenth. That the United States Circuit Court of Appeals for the Second Circuit did err in not holding that the proofs in this

cause established the fact that the by-laws which are made part of the policy of insurance in suit were the by-laws as appellant defined in Appellant's Exhibit "A," being the By-Laws of 1888, and the rejection of said by-laws by the District Court for the Northern District of New York and the United States Circuit Court of Appeals for the Second Circuit was error, as the proofs and records show that said by-laws were conclusively proven as being the by-laws in force at the time the policy of insurance in suit was issued and the said by-laws are not set out in full in this assignment of error, being too voluminous they being the by-laws of 1888, consisting of the set of laws set out in Appellant's Exhibit "A" it being the purpose of the appellant herein to assign as error the refusal of the United States District Court for the Northern District of New York and the United States Circuit Court of Appeals for the Second Circuit to consider said by-laws as contained in Appellant's Exhibit "A" part of the contract and as duly proven so to be.

Eighteenth. That the United States Circuit Court of Appeals for the Second Circuit erred in affirming the decree of the United States District Court for the Northern District of New York entered February 19th, 1913, because the proofs and records in this cause show that under the policy of insurance issued between the parties herein that the above named appellant had the right to increase the rate of assessment issued to appellee.

Nineteenth. That the United States Circuit Court of Appeals erred in considering as part of the evidence in this cause as part of the contract between the parties the by-laws set forth in Complainant's Exhibit "C" being the by-laws adopted by appellant in 1886, consisting of numerous pages of printed matter in the record herein over the objection of appellant.

Twentieth. That the United States Circuit Court of Appeals erred in holding that the appellee when he received the policy of insurance in any manner relied upon the constitution, by-laws and statement in form, a circular furnished him by the defendant, or any statements therein contained, that his regular assessments thereafter would remain the same and would not be increased, as such facts are contrary to the evidence, unsupported by the evidence and against the weight of evidence and contrary to law as the proofs and records in this cause show.

Twenty-first. That the United States Circuit Court of Appeals erred in holding that at the time the appellee made application for a certificate of insurance there was delivered to him by any agent of the appellant a copy of the by-laws and constitution of 1886, and it also holding that at or prior to the time of the delivery of said certificate or policy to the appellee by appellant's agent there was also delivered circular set forth in the 8th finding of fact of the District Court of the Northern District of New York because such finding is contrary to evidence and unsupported by the evidence and against the weight of evidence as the proofs and records in this cause show.

Twenty-second. That the United States Circuit Court of Appeals for the Second Circuit erred in not reversing the decree of the United

States District Court for the Northern District of New York entered February 19th, 1913, and directing a decree to be entered dismissing the bill or complaint of the appellee above named upon the merits by reason of the fact that the proofs and records in this cause show that the above named appellee was not entitled to the relief granted to him in the decree of the said District Court or to any equitable relief and that under the proofs in this cause the appellant above named was entitled to a decree dismissing the bill or complaint of above named appellee upon the merits.

Twenty-third. That the United States District Court for the Northern District of New York did also err for the reasons set forth in the foregoing Assignment of Errors and the Assignment of Errors heretofore assigned on the appeal to the United States Circuit Court of Appeals for the Second Circuit are hereby re-assigned as error and are not set forth at length to avoid repetition.

Wherefore, the appellant prays that said decree be reversed and that a decree shall be directed dismissing the bill of the appellee and for such other and further relief as the Court may deem proper to decree on the record.

Dated Albany, N. Y., January 7th, 1916.

JOHN J. McCALL,
Solicitor for Appellant.

100 State Street, Albany, N. Y.

The foregoing Assignment of Errors was presented this 8th day of January, 1916, and ordered filed.

E. HENRY LACOMBE,
*United States Circuit Judge, United States Circuit
Court of Appeals for the Second Circuit.*

(Endorsed:) United States Circuit Court of Appeals for the Second Circuit. Arthur V. H. Smyth, Complainant-Appellee, vs. Supreme Lodge Knights of Pythias, Defendant-Appellant. Assignment of Errors on Appeal. John J. McCall, Attorney for Def't-Appellant. Office and Post-Office Address, 100 State Street, Albany, N. Y. United States Circuit Court of Appeals, Second Circuit. Filed Jan. 8, 1916. William Parkin, clerk.

United States Circuit Court of Appeals for the Second Circuit.

ARTHUR V. H. SMYTH, Complainant-Appellee,

vs.

SUPREME LODGE, KNIGHTS OF PYTHIAS, Defendant-Appellant.

Know all men by these presents, That the Globe Indemnity Company, of New York, N. Y., a corporation lawfully engaged in the surety business in the State of New York, is firmly held and bound unto the above named Arthur V. H. Smyth in the sum of One Thousand Dollars (\$1,000.00) to be paid to the said Arthur V. H. Smyth, for the payment of which, well and truly to be made, we bind

ourselves and our successors and assigns, jointly and severally, firmly by these presents.

Sealed with our seals and dated the seventh day of January, in the year of our Lord one thousand nine hundred sixteen.

Whereas, the above named Supreme Lodge Knights of Pythias has prosecuted an appeal to the Supreme Court of the United States to reverse a decree rendered in the above entitled suit by the United States Circuit Court of Appeals for the Second Circuit,

Now, therefore, the condition of this obligation is such, that if the above named Supreme Lodge Knights of Pythias shall prosecute said appeal to effect and answer all damages and costs if he fail to make said appeal good then this obligation shall be void, otherwise same shall be and remain in full force and virtue.

[SEAL.]

GLOBE INDEMNITY COMPANY,
By JOHN F. BRADY,

Attorney-in-Fact.

" JOHN J. McCALL,

Attorney-in-Fact.

January 8th, 1916.

Approved by

E. HENRY LACOMBE,
*United States Circuit Judge, United
States Circuit Court of Appeals for
the Second District.*

STATE OF NEW YORK,

City and County of Albany, ss:

On this — day of —, 191—, before me, the subscriber, personally appeared John F. Brady and John J. McCall, to me known, who, being by me duly sworn, did depose and say that they reside in the City and County of Albany, N. Y.; that they are Attorneys-in-fact of the Globe Indemnity Company the corporation described in and which executed the within instrument; that they know the corporate seal of the said corporation; that the seal affixed to the within instrument is such corporate seal; that it was affixed thereto by authority of the Board of Directors of the said corporation and that they signed *there* names thereto by like authority; and that the liabilities of the said Company do not exceed its assets, as ascertained in the manner provided in Chapter 23 of the Laws of 1909, constituting Chapter 28 of the Consolidated Laws of the State of New York, and known as the Insurance Law.

[Seal Nicholas J. Barry, Jr., Notary Public, Albany
County, N. Y.]

[SEAL.]

NICHOLAS J. BARRY, JR.,
Notary Public, Albany Co., N. Y.

Know all Men by these Presents: That the Globe Indemnity Company, by K. R. Owen, its Vice-President, in pursuance of authority granted by Section 1, Article IX, of the By-Laws of said Company, a

copy of which section is hereto attached, does hereby nominate, constitute and appoint John F. Brady and John J. McCall, both of Albany, State of New York, its true and lawful agents and attorneys-in-fact, to make, execute, seal and deliver for and on its behalf, and as its acts and deed any and all bonds and undertakings in its business of guaranteeing the fidelity of persons holding places of public or private trust, and in the performance of contracts other than insurance policies, and executing and guaranteeing bonds and other undertakings required or permitted in all actions or proceedings or by law required or permitted. All such bonds and undertakings to be signed for the Company by the said John J. McCall and attested and the Seal of the Company attached thereto by the said John F. Brady, as occasion may require. And the execution of such bonds or undertakings in pursuance of these presents, shall be as binding upon said Company, as fully and amply, to all intents and purposes, as if they had been duly executed and acknowledged by the regularly elected officers of the Company at its office in New York City, State of New York, in their own proper persons.

In Witness Whereof, the said K. R. Owen, has hereunto subscribed his name and affixed the Corporate Seal of the said Globe Indemnity Company, this 6th day of March, 1914.

[Seal of Globe Indemnity Company, New York.]

K. R. OWEN,
Vice-President.

STATE OF NEW YORK,
County of Albany, ss:

I, John F. Brady, Attorney-in-fact, of the Globe Indemnity Company, have compared the foregoing Power of Attorney with the original thereof, and do hereby certify that the same is a correct and true transcript therefrom and of the whole of said original Power of Attorney.

In Witness Whereof, I have hereunto set my hand and affixed the Seal of the said Company, at the City of Albany, this 7th day of January, 1916.

[Seal of Globe Indemnity Company, New York.]

JOHN F. BRADY,
Att'y in Fact.

Extract from By-Laws of the Globe Indemnity Company, adopted by the directors of said Company on May 29th, 1912:

"Article IX, Section 1.—The President, any Vice-President or the General Manager and Secretary, shall have power and authority to appoint resident Vice-Presidents, resident Assistant Secretaries and Attorneys-in-fact, and to authorize them to execute on behalf of the Company, and attach the Seal of the Company thereto, bonds and undertakings, recognizances, contracts of indemnity and other writings obligatory in the nature thereof."

I, W. J. Dormer, Ass't Secretary of the Globe Indemnity Company,

hereby certify that the foregoing is a true copy of Section 1, Article IX, of the By-Laws of said Company, and is still in force.

In Testimony Whereof, I have hereunto subscribed my name as Ass't Sec. and affixed the Corporate Seal of the Globe Indemnity Company, this 7th day of Jan'y, A. D. 1916.

[Seal of Globe Indemnity Company, New York.]

W. J. DORMER,
Assistant Secretary.

[Seal of Globe Indemnity Company of New York.]

Globe Indemnity Company.

Statement of June 30th, 1915.

Resources.

Railroad and Miscellaneous Bonds	\$1,378,527.50
Railroad Stocks	632,500.00
State and Municipal Bonds	837,460.00
Cash in Office and Banks	485,683.50
Premiums in Course of Collection	819,290.34
Interest Due and Accrued	34,330.83
Ledger Balances Secured	54,453.24
Salvage Secured	26,114.48
	<hr/>
	\$4,268,359.89

Liabilities.

Capital Stock	\$750,000.00
Reserve for Losses	949,441.31
Reserve for Premiums	1,639,659.68
Reserve for Commissions	175,411.29
Reserve for Taxes	30,000.00
Reserve for Sundry Accounts	10,000.00
Voluntary Reserve for Contingencies	250,000.00
Surplus	463,847.61
	<hr/>
	\$4,268,359.89

STATE OF NEW YORK,
County of Albany, ss:

I, John F. Brady, Attorney-in-fact, of the Glove Indemnity Company, do hereby certify that the foregoing is a true and correct statement of the financial condition of said Company, as of June 30th, 1915, and that the financial condition of said Company is as favorable now as it was when said statement was made.

[Seal of Globe Indemnity Company, New York.]

JOHN F. BRADY,
Attorney-in-Fact.

Subscribed and sworn to before me this — day of —, 191—.

NICHOLAS J. BARRY, JR.,
Notary Public, Albany County.

(Endorsed:) United States Circuit Court of Appeals for the Second Circuit. Arthur V. H. Smyth, Complainant-Appellee, vs. Supreme Lodge Knights of Pythias, Defendant-Appellant. Bond. John J. McCall, Attorney for Def't-Appellant. Office and Post-Office Address, 100 State Street, Albany, N. Y. Due and personal service of the within — and of the notice hereon endorsed, is admitted this — day of —, 19—, at —. —, Attorney for —. United States Circuit Court of Appeals, Second Circuit. Filed Jan. 8, 1916. William Parkin, Clerk.

UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, William Parkin, Clerk of the United States Circuit Court of Appeals for the Second Circuit, do hereby Certify that the foregoing pages, numbered from 1 to 417 inclusive, contain a true and complete transcript of the record and proceedings had in said Court, in the case of Arthur V. H. Smyth against Supreme Lodge Knights of Pythias as the same remain of record and on file in my office.

In Testimony Whereof, I have caused the seal of the said Court to be hereunto affixed, at the City of New York, in the Southern District of New York, in the Second Circuit, this 24th day of January in the year of our Lord One Thousand Nine Hundred and Sixteen and of the Independence of the said United States the One Hundred and fortieth.

[Seal United States Circuit Court of Appeals, Second Circuit.]

WM. PARKIN, *Clerk*.

[United States internal revenue documentary stamp, series of 1914, ten cents, canceled. W. P.]

Citation on Appeal.

UNITED STATES OF AMERICA, *ss:*

To Arthur V. H. Smyth, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States to be holden at Washington on the 5th day of February, 1916, pursuant to an appeal filed in the Clerk's office of the United States Circuit Court of Appeals for the Second District, wherein Supreme Lodge Knights of Pythias is Appellant and Arthur V. H. Smyth is Appellee, to show cause, if any there be, why decree in said appeal mentioned should not be corrected and speedy justice should not be done to the parties on that behalf.

Witness, Hon. Edward Douglass White, Chief Justice of the United

States, this eighth day of January, in the year of Our Lord one thousand nine hundred sixteen.

E. HENRY LACOMBE,
*United States Circuit Judge, United
States Circuit Court of Appeals for
the Second Circuit.*

I, Harry V. Borst, duly substituted as attorney for Arthur V. H. Smyth above named, in the place and stead of Robert J. Sanson Esq., Deceased, in the above entitled action by an order of the United States District Court for the Northern District of New York duly made and entered on the 9th day of March 1915, do hereby admit service of the foregoing citation this 14th day of January, 1916.

HARRY V. BORST,
Attorney for Appellee.

[Endorsed:] State of New York. United States Circuit Court of Appeals for the Second Circuit. Arthur V. H. Smyth, Complainant-Appellee, vs. Supreme Lodge Knights of Pythias, Defendant-Appellant. Citation on Appeal. John J. McCall, Attorney for Defendant-Appellant. Office and Post-Office Address, 100 State Street, Albany, N. Y. Due and personal service of the within Citation on Appeal and of the notice hereon endorsed, is admitted this 14th day of January 1916, at ——. Harry V. Borst, Attorney for Complainant-Appellee. United States Circuit Court of Appeals, Second Circuit. Filed Jan. 20, 1916. William Parkin, Clerk.

Endorsed on cover: File No. 25,150. U. S. Circuit Court Appeals, 2d Circuit. Term No. 867. Supreme Lodge, Knights of Pythias, appellant, vs. Arthur V. H. Smyth. Filed February 21st, 1916. File No. 25,150.

17
Office Supreme Court, U. S.

FILED

APR 20 1917

JAMES D. MAHER

CLERK

BRIEF FOR APPELLANT.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1916.

No. [REDACTED] 107

SUPREME LODGE, KNIGHTS OF PYTHIAS,
APPELLANT,

vs.

ARTHUR V. H. SMYTH,
APPELLEE.

Appeal from the United States Circuit Court of Appeals
for the Second Circuit.

JOHN J. McCALL,
Attorney for Appellant.

JAMES E. WATSON,
WARD H. WATSON,
SOL. H. ESAREY,
Of Counsel.



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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1916.

No. 389.

SUPREME LODGE, KNIGHTS OF PYTHIAS, against ARTHUR V. H. SMYTH, Appellee.	}
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BRIEF FOR APPELLANT.

STATEMENT OF PROCEEDINGS.

The appeal in the above entitled cause is taken from the decree of the United States Circuit Court of Appeals for the Second Circuit and mandate of said court filed January 25, 1915 (p. 397), which affirmed a decree of the United States District Court for the Northern District of New York, entered February 19, 1913. (P. 380.)

The opinion of trial court written at time of decision of above cause is printed in record at pages 320-364 and is reported in 198 Fed., 967.

The opinion of United States Circuit Court of Appeals for Second District, written at time of decision of cause upon appeal, is printed in record at pages 394-396 and is reported in 220 Fed., 438.

The suit was originally brought in the Supreme Court of the State of New York, venue being laid in Montgomery county, New York, and upon petition

of defendant an order was made upon the filing of the usual bond, removing cause to United States District Court for Northern District of New York. (Pp. 25-28.)

The suit was brought by plaintiff in court below against defendant permanently to enjoin defendant from cancelling a certain policy of life insurance issued by defendant to plaintiff, on account of refusal of plaintiff to pay an increased premium thereupon, assessed against said policy in pursuance of a by-law enacted by defendant, and further demanding a judgment against defendant that the policy so issued be declared a valid policy and be kept in force as a valid policy by defendant upon payment by plaintiff to defendant of former rate of assessment paid by plaintiff upon said policy of insurance.

The complaint alleged in substance that the plaintiff was a resident of the county of Montgomery in State of New York, that defendant was a foreign corporation, organized under the laws of the State of Indiana and was engaged in the business of insuring members of defendant order through its Endowment Rank; that on or about November 7, 1889, upon application of plaintiff and upon payment by plaintiff to defendant of admission fee required and in consideration of all assessments required to be paid thereafter as said assessments were then fixed and determined at three dollars per month, the defendant duly issued its policy of insurance to defendant in and by the terms of which it agreed to pay unto the children of plaintiff upon death of plaintiff the sum of \$3,000; that plaintiff received said policy, and, thereafter, complied with all terms and conditions of said policy and paid all dues and assessments as same became due; that shortly prior

to the commencement of the suit (suit commenced December 31, 1910) the defendant notified the plaintiff in writing that unless plaintiff surrendered his policy and accepted another policy in lieu thereof containing different terms and conditions and pay an increased assessment of \$14.70 per month, instead of \$3.00 per month, the defendant would cancel the policy theretofore issued and declare same void; that defendant intended to cancel and annul said policy issued to plaintiff unless plaintiff surrendered said policy and paid an increased assessment in amount of \$14.70 per month by reason of which the right and claim of plaintiff under said policy would be destroyed and that plaintiff had no adequate remedy at law to enforce his rights and prevent a cancellation of said policy of insurance. The relief demanded in the complaint in brief was a decree restraining defendant from cancelling policy and adjudging that defendant had no right to demand from plaintiff any greater assessment than plaintiff paid prior to commencement of suit and that defendant be required to keep policy in force upon payment by plaintiff to defendant of prior rate of assessment. (P. 3.)

The answer of defendant admitted that the policy in suit was issued but denied that consideration for issuing same was payment of premiums as such premiums were then fixed and determined. The answer further admitted residence of plaintiff and that defendant was a corporation. Defendant denied it "was organized under laws of State of Indiana, but alleged it was organized under special act of Congress, and further states its true corporate name. The complaint was afterwards amended to describe defendant by its true corporate name.

The facts set forth in answer of defendant to complaint, were, briefly, that defendant was a fraternal society duly incorporated under Act of Congress duly approved June 29th, 1894, the purposes of incorporation being specified in said Act of Congress as fraternal and benevolent; that defendant did succeed by its act of incorporation to all the rights and assumed all the obligations of a then existing corporation of identical name, which corporation that defendant succeeded had been incorporated under laws of Congress under date of August 5, 1870, that defendant by its charter of incorporation was empowered to amend its by-laws at its pleasure; that the corporation of identical name which defendant succeeded had by its charter lawfully amended theretofore on March 7th, 1877, created a division of its order termed Endowment Rank, now known as Insurance Department, Knights of Pythias of the World, and that on October 26, 1889, the date of application for policy in suit, there was a division of such Endowment Rank, rated according to amount payable to members thereof known as the Fourth Class, that on October 26, 1889, plaintiff made written application to become a member of said Fourth Class and in his said written application agreed to pay all dues and assessments for which he became liable and that he would be governed and that his contract would be controlled by all laws of order governing his rank then in force or which thereafter might be enacted by defendant; that on November 7, 1889, the defendant issued to plaintiff its certain certificate or policy of insurance wherein it was provided that there would be paid unto the beneficiaries nominated by plaintiff the sum of three thousand dollars upon the payment

by plaintiff to said Endowment Rank of all dues and assessments required to be paid by the rules and by-laws governing said Endowment Rank and the full compliance upon the part of plaintiff with all the rules and laws of Endowment Rank, then in force or to be thereafter enacted; that the certificate further provided that in the event that one assessment levied upon all members of the Fourth Class did not realize the sum of three thousand dollars, the amount payable to beneficiaries under such policy would be the amount realized upon one assessment upon all members of Fourth Class less ten per centum for collection of same; that the rate of assessment upon policies of insurance issued to members of Endowment Rank at time policy was issued to plaintiff was established in pursuance of a by-law which provided that members should pay the rate of assessment set forth in a table annexed to said by-law and were to continue to pay same said rate of assessment each month as long as membership continued UNLESS OTHERWISE PROVIDED FOR BY THE SUPREME LODGE, KNIGHTS OF PYTHIAS OF THE WORLD: That the rate of assessment provided for in by-laws upon policy issued to plaintiff at time policy was issued to plaintiff was the sum of three dollars per month; that thereafter and in or about the month of August, 1910, the defendant duly amended its by-laws as it lawfully might and in pursuance of amended by-laws the assessment of plaintiff was increased to sum of \$14.70 per month; and there was at same time certain by-laws lawfully adopted which gave unto plaintiff in the event plaintiff did not desire to continue policy in full force upon payment of said increased assessment, an election of continuing to pay at former rate and receive a policy for a less

amount than former certificate and certain divers other options; that the by-laws of defendant forming part of contract of insurance did provide that in case of the failure of plaintiff to observe by-laws, and make prompt payments of all assessments established by the by-laws; the policy and all benefits thereunder were forfeited; that plaintiff failed and neglected to make any payments upon his policy from and after January 1, 1911, and did not elect to accept any of the options offered to plaintiff under by-laws as amended in August, 1910, on account of which his said policy became null and void. The answer also alleged as another defense in substance that defendant in 1901 passed a by-law increasing rate of assessment from \$3.00 to \$4.80 per month, in which it was provided that said increased rate was to continue unless otherwise provided, which by-law gave defendant right to increase rates of assessment in future and that plaintiff with full notice and knowledge of said by-law consented to same and paid the increased assessment thereunder up to January 1, 1911, when he refused to pay the additional increased assessment lawfully assessed against his certificate and thereby forfeited all rights under his certificate. (Pages 11-23.)

There was also a defense interposed that the complaint did not state facts sufficient to constitute a cause of action against defendant.

The theory of plaintiff's cause of action was that the defendant had no right under the contract of insurance to increase the rate of assessment upon policy issued to plaintiff; and therefore its action in demanding an increased rate of assessment and threatening to cancel the policy in the event plaintiff failed to pay such increased assessment entitled

plaintiff to the equitable relief prayed for in the complaint.

The contention of defendant was that under the contract of insurance between plaintiff and defendant, the rate of assessment at the time the policy was issued was only to remain at the amount then stated in the event the defendant did not otherwise provide; that a special provision of the by-laws forming a part of contract gave defendant authority to raise rate at any time such increase in rate was in judgment of defendant necessary to perpetuate the Endowment Rank; that there was also a general clause authorizing defendant to amend its by-laws and that plaintiff in his certificate had contracted to observe the by-laws in force and those that might be thereafter enacted; that the plaintiff in violation of his contract had refused and neglected to pay his rate of assessment in conformity with a valid amended by-law, and under the terms of his policy his failure to make such payment forfeited his rights under the policy.

And as a defense collateral to the above it was alleged that in 1901 amended by-laws were passed increasing rate of assessment against the policy held by plaintiff as well as others outstanding and authorizing further increases in assessments should such increase be deemed necessary in judgment of defendant for solvency of its insurance branch and plaintiff acquiesced in such amended by-law, consented to same and paid said increased assessment up to January, 1911, when assessment established by a new valid by-law went into effect, and then plaintiff refused to pay such increased assessment lawfully demanded of him by defendant and by such refusal forfeited his rights and all benefits under the policy in suit.

The court took testimony of plaintiff's witnesses in open court April 24, 1912. (Pp. 32-53.)

At the close of taking plaintiff's evidence, the court granted defendant forty days time to take its testimony. The plaintiff was to have twenty days thereafter to take or submit evidence in opposition, the depositions to be taken on the usual notice and final hearing was set down for July 15, 1912. (P. 53, fol. 210.)

Defendant upon due notice took deposition of Walter O. Powers, secretary of defendant, at Indianapolis, Ind., May 10, 1912. The plaintiff did not appear upon the taking of said deposition. (Pp. 147-148.) This deposition was filed in the clerk's office June 3, 1912. (Fol. 743.)

Defendant gave plaintiff due notice of taking deposition of witness Wolfe on May 15, 1912, at New York city. (Pp. 187-189.) Plaintiff did not appear upon taking of deposition of witness Wolfe. (P. 207.) The deposition was filed in office of clerk June 3, 1912. (Fol. 830.)

Plaintiff offered no testimony in opposition to the testimony of witnesses for defendant after depositions were filed.

The final hearing upon all the evidence was had before the Honorable District Court at Chambers at Norwich, N. Y., July 15, 1912, and cause finally submitted that day.

A set of findings of fact and conclusions of law signed by trial court were filed February 19, 1913. (Pp. 365-379.)

Decree was made and entered February 19, 1913, which in substance granted plaintiff the entire relief prayed for in the complaint. (Pp. 380-382.)

The petition for appeal to the U. S. Circuit Court of Appeals for Second Circuit was allowed and undertaking duly approved and citation issued on appeal to plaintiff August 6, 1913, and due service made of citation.

Assignment of errors on said appeal was presented to trial court August 6, 1913, and was ordered filed and assignment of errors on appeal to Circuit Court of Appeals was filed August 8, 1913. (Pp. 384-391.)

Appeal to the United States Supreme Court was allowed January 8, 1916. (P. 398.)

Assignment of errors on appeal to the Supreme Court was presented January 8, 1916, and ordered filed, and said assignment of errors is printed at pages 399-403 of the record.

Service of citation on appeal was admitted January 14, 1916. (Page 408.)

Assignment of errors on appeal to this court presents the same questions for review as were presented in the court below and succinctly stated are as follows:

THE QUESTIONS OF EVIDENCE ARE:

1. The competency of Plaintiff's Exhibit "C," being a pamphlet purporting to contain the by-laws of defendant adopted in 1886, received over objection of defendant.

2. The competency of Defendant's Exhibit "A," being a pamphlet purporting to contain by-laws of defendant order adopted in July, 1888, and alleged by defendant to form part of contract of insurance held by trial court upon objection of plaintiff taken at the final hearing to have not been proven.

3. The competency of Plaintiff's Exhibit "D," being a printed circular pointing out the advantages of insurance issued by defendant.

4. The competency of Plaintiff's Exhibit "E," being printed instructions for information of subordinate secretaries of defendant.

The questions presented upon review arising out of construction and operation of contract of insurance are briefly :

1. Did the contract of insurance consist of by-laws set forth in Plaintiff's Exhibit "C," together with Plaintiff's Exhibits "A" and "B," being application and policy, or did the contract of insurance consist of by-laws set forth in Defendant's Exhibit "A," together with Plaintiff's Exhibits "A" and "B," being the application and policy?

2. Does the evidence support a finding that defendant is estopped from contending that Plaintiff's Exhibit "C," purporting to be by-laws adopted in 1886, did not form part of contract of insurance?

3. Assuming that the contract of insurance was composed of Plaintiff's Exhibits "A" and "B," the application and policy, and Defendant's Exhibit "A," the by-laws of 1888, was defendant authorized to increase rate of assessment under terms of contract?

4. Assuming that the contract of insurance was comprised of Plaintiff's Exhibits "A" and "B" and "C," the application, policy and purported by-laws of 1886, was defendant authorized to increase rate of assessment under terms of contract?

5. Was the amount of increase in the assessment upon the policy reasonable and necessary?

6. Did the failure of plaintiff to pay increased assessment demanded of him forfeit policy?

7. Are the appellee's rights to be determined by the Federal charter of 1894, or can he claim rights existing under the old articles of incorporation and charge such liability against newly created corporation?

There are also the following questions presented for review, having to do with the remedy asked and granted by the court below:

First. Was the relief granted by court below an unlawful interference with internal affairs of a foreign corporation?

Second. Was plaintiff entitled to the relief prayed for and granted by reason of the fact he had an adequate remedy at law?

FACTS.

The plaintiff's evidence consisted of testimony of witnesses, the plaintiff himself, and one Ja. J. Lenthal, the secretary of insurance section of defendant at Amsterdam, N. Y.

The original application for insurance was received in evidence (fol. 128) and is printed at length at page 54. The application, among other things, contained the following agreement:

"I hereby agree that I will punctually pay all dues and assessments for which I may become liable, and that I will be governed and this contract shall be controlled by all the laws, rules and regulations of the order governing this rank now in force, or that may hereafter be enacted by the Supreme Lodge, Knights of Pythias of the World, or submit to the penalties therein contained. To all of which I willingly and freely subscribe.

"Dated at Amsterdam, N. Y., this 26th day of October, 1889.

"ARTHUR V. H. SMYTH."

(Fols. 236-237.)

The policy was offered in evidence and received (fol. 129) and is set out in full at page 67. The consideration of policy is recited to be :

“ In consideration of the representations and declarations made in his application, bearing date October 26, 1889, which application is made part of this contract, and the payment hereafter to said Endowment Rank, of all assessments as required and the full compliance with all the laws governing this rank, now in force, or that hereafter may be enacted, and shall be in good standing under said laws.”
* * *

The policy is dated November 7, 1889, is in the amount of \$3,000, and recites the plaintiff therein named to be a member of Fourth Class of Endowment Rank.

The oral testimony of plaintiff and his witness had for its evident purpose the establishing of facts to sustain the allegations in the complaint and at same time refute allegations in answer of defendant.

The plaintiff, in the court below, alleged in his complaint that his contract called for payment of continuous monthly assessments, only as such payments were then fixed and determined, and that he only paid such an amount of assessment up to January 1, 1911. The answer of defendant on that point set up specifically the by-laws in force at time plaintiff made his application which showed table of rates therein were to prevail unless defendant otherwise provided (fol. 64), and that in 1901, in pursuance of a by-law enacted by defendant, the rate of plaintiff was increased to \$4.80 a month, which same by-law gave defendant right further to increase its rates and that plaintiff acquiesced in new by-laws and paid new rates up to January 1,

1911. To overcome this, plaintiff attempted to establish as part of contract of insurance a paper purporting to be by-laws in 1886, adopted three years before contract was made, and also sought to establish an estoppel in reference to rate increase on part of defendant by showing defendant issued a pamphlet, Plaintiff's Exhibit "D" (page 100), which plaintiff received, which stated there would be no increase in rate; and to overcome force and effect of plaintiff having, in fact, paid an increased assessment from 1901, to January 1, 1911, defendant claimed he paid said increased rate, not in pursuance of a by-law enacted by defendant, but upon a representation such increase was called for to create a surplus fund and that such representation was made by defendant. (Exhibit "E," page 104.)

The evidence of plaintiff on these matters was as follows: He is a resident of city of Amsterdam (fol. 131); when policy was delivered to him at Amsterdam a book purporting to be by-laws of order was given to him. Who gave him the book, which is Plaintiff's Exhibit "C," he didn't know (fols. 135, 136); Plaintiff's Exhibit "D" was given to him at same time (fol. 137); at folio 136 he says these Exhibits "C" and "D" were delivered same time, the same night, and at folio 137 says Exhibit "C" was delivered that time or just prior to it. He retained Exhibits "C" and "D" with his policy ever since. (Fol. 138.) He paid his assessment of \$3.00 a month up to about 1901, when his assessment was increased up to \$4.80 a month, which latter amount he paid up to January 1, 1911. He says he paid it in pursuance of a notice that a surplus fund of some kind was to be created and that Exhibit "E" was the notice. (Fols. 140-143.)

He repeatedly states he does not know who gave him Plaintiff's Exhibit "C" and Exhibit "D." (Fols. 152, 153, 154.)

It appears from testimony of plaintiff that he read the application before he signed same, and that he intended when he signed application to be bound by the rules and by-laws of defendant as they then existed. (Fols. 156, 157.) Plaintiff's Exhibits "C" "D" were not seen by plaintiff before his application which was so signed by him with the intention on his part of being bound by rules and laws of defendant as such rules and laws of defendant then existed and in fact were not delivered by any one to him until after the contract was delivered to him. (Fols. 154-156.)

Plaintiff knew that no officers of his local lodge had authority to issue policy or pass upon his application for a policy. (Fol. 170.)

He made no payments of increased assessments of \$14.70 since January 1, 1911, nor did he elect to accept any of options offered by defendant to him in lieu of making such payment. (Fols. 165-171.)

Witness Fredendall was evidently called to establish fact that he gave plaintiff the exhibit of plaintiff marked "C."

He states plainly that he does not know whether he gave plaintiff the exhibit or not; that he has no recollection of it whatever. (Fols. 181-197.)

The Exhibit "C" was in itself a copy (fol. 178) and witness does not know whether the Exhibit "C" so offered was a copy of the by-laws in existence at the time or not. (Fols. 178-179-201-205.)

There is not a scintilla of evidence that any representation was made by any one to plaintiff

that the by-laws contained in Plaintiff's Exhibit "C" were part of his contract of insurance. Where or by whom Plaintiff's Exhibit "D" was issued does not appear.

The court, over objection, received the Exhibits "C" and "D" and "E" in evidence. (Fols. 183-206.)

Plaintiff's Exhibit "C" is printed at length at pages 70-100.

The portions of said Exhibit "C" of plaintiff which bear upon issues in above entitled action will be noticed.

In the first instance it is to be gathered from the exhibit that said "Exhibit "C" of plaintiff is the Constitution and General Laws of the Endowment Rank Knights of Pythias of the World, and that such laws and constitution were adopted at a session of the Supreme Lodge, held at Toronto, Ont., from July 13, to July 23, inclusive, 1886. That is, they were adopted over three years prior to time plaintiff made application for his certificate. (Page 70.)

The portion of said Exhibit "C" which provided for rate of assessments upon policies is section 1 of article 1V (page 78) which reads as follows:

"ARTICLE IV.

"MONTHLY ASSESSMENTS AND FORFEITURE OF CERTIFICATE OF ENDOWMENT.

"Section 1. Each member of the Endowment Rank shall, on presenting himself for obligation, pay to the secretary of the Section, in accordance with his age and the amount of endowment applied for, a monthly assessment, as provided for in the

following table, and shall continue to pay the same amount each month thereafter as long as he remains a member of the Endowment Rank."

Then follows a table of assessments increasing in amount with increasing age of applicant, and proportioned to amount of insurance applied for, from which table it appears that the rate of assessment upon insurance to amount of \$3,000 issued to an applicant of attained age of thirty-seven years, the age of plaintiff at the time he applied for insurance, would be the sum of \$3.00 per month.

Article 4 of Plaintiff's Exhibit "C" differs in context from Article 4 of Defendant's Exhibit "A" only in that case there is added two lines additional to Article 4 of Defendant's Exhibit "A." The rates are identical but the two additional lines in Article IV of Defendant's Exhibit "A" materially alter contract of insurance in one aspect; that is, that the contract did not provide that plaintiff was to pay an assessment continuously as such assessment was then fixed and determined. The two additional lines in Article IV of Defendant's Exhibit "A" follow the last word in Article IV of Plaintiff's Exhibit "C" above set forth, and are "UNLESS OTHERWISE PROVIDED FOR BY THE SUPREME LODGE, KNIGHTS OF PHYTHIAS OF THE WORLD." (Page 217.)

It appears that among the powers reserved to the Supreme Lodge there is the following provision of Section 6 of Article 1:

"SECTION 6. TO CREATE, HOLD AND DISBURSE THE FUNDS OF THE ENDOWMENT RANK, UNDER SUCH REGULATIONS AS IT (THE SUPREME LODGE) MAY DEEM NECESSARY." (Fol 281.)

There is also set forth in Plaintiff's Exhibit "C" the following powers reserved as set forth in Section 5 of Article V of said Exhibit "C."

"Section 5. The power to adopt any additional forms, alter or amend any of the laws, or the business details connected with the Endowment Rank is vested in the Supreme Lodge exclusively and it shall be the duty of that body to preserve uniformity in the workings of the rank in detail and to require on the part of all sections a strict conformity therewith." (Fol. 326.)

The right of defendant to call for special or extra assessments was conferred by Sections 1 and 3 of Article VI of the Constitution in said Exhibit "C" of plaintiff. (Fols. 327-332.)

The last article of the Constitution set forth in Plaintiff's Exhibit "C" is as follows:

"ARTICLE XI.

AMENDMENTS.

"THESE LAWS may be altered or amended at a regular session of the Supreme Lodge, Knights of Pythias of the World by a two-thirds vote." (Fol. 354.)

Then follows twelve articles of general laws which have apparently for their object the internal regulation of the Endowment Rank and the last article is as follows:

"ARTICLE XII.

AMENDMENTS.

"THE PROVISIONS OF THESE GENERAL LAWS MAY BE ALTERED OR AMENDED AT ANY REGULAR SESSION OF THE SUPREME LODGE, KNIGHTS OF PYTHIAS OF THE WORLD BY A TWO-THIRDS VOTE. (Fol. 397.)"

Plaintiff's Exhibit "D" (page 100) is evidently an advertising circular. It contains a statement that rates do not increase (fol. 103) with age. There is not the slightest evidence from whom plaintiff received the same, nor is same dated.

Plaintiff's Exhibit "E" (page 104) is a letter of instructions to secretaries of sections. Plaintiff has testified that it was in pursuance of information he derived from this exhibit that he paid the increased rate of \$4.80 per month. The circular itself states that the Constitution and General Laws, Rules and Regulations, promulgated by the Board of Control, November 6, 1900, and amendments thereto, were in full force and effect. (Fol. 418.) The circular was dated July 15, 1901. (Fol. 414.) It contains a table of assessments (pages 106-107) from which it appears that rate of assessment upon a policy of \$3,000 for a person of attained age of plaintiff, thirty-seven years, was \$4.80 per month. It contains nothing about a reserve fund and plaintiff, when he paid his increased assessment of \$4.80 from 1901 to January, 1911, in pursuance of the information he derived from Plaintiff's Exhibit "E" must have paid such increased assessment with knowledge he was so doing in pursuance of by-laws of defendant.

Plaintiff knew no officers of the local lodge had any authority to issue policy. (Fol. 170.)

The above comprises practically a statement of the evidence of plaintiff to support his cause of action.

From such statement it appears that plaintiff in court below applied for policy of insurance from defendant and that at time of his application he understood and intended to be understood that the

by-laws of defendant, as such by-laws then existed, were to form part of his contract, that he did not see either of Exhibits "C" or "D" until after he had made such application; that it does not appear from whom he did receive Exhibits "C" and "D;" that no representation was made to him by anyone as to force, effect or operation of such Exhibits "C" and "D" as to his contract, that as far as his testimony is concerned nothing contained in Exhibits "C" and "D" influenced him or his actions with respect to his policy of insurance in any way, that he paid an increased assessment upon his policy from 1901 to January, 1911, in pursuance of information contained in plaintiff's Exhibit "E" and such exhibit fairly apprised him that the by-laws of 1900 were in force, and according to same his rate of assessment was increased, that he received notice of increased assessment prior to January 1, 1911, and refused to pay any and all increased assessments after January 1, 1911.

The testimony offered on part of defendant was directed to establish its corporate existence, the nature of its business, its contract of insurance with plaintiff, the successive steps leading up to change of rates in 1910, the necessity and reasonableness of such rates as they were established in 1910 and failure and neglect of plaintiff to carry out the provisions of the contract of insurance upon his part to be performed.

The defendant swore but two witnesses. The first witness sworn was witness Powers, whose testimony was taken by deposition.

Due notice of the taking of the testimony of this witness was admitted. (Fol. 588.)

The plaintiff did not appear at taking of testimony of this witness, and no objections were offered to his testimony. (Fol. 591.)

His deposition was returned and filed June 3, 1912. (Fol. 743.) No motion was made to suppress deposition for informality or any other cause before the hearing July 15, 1912.

Witness Powers is thirty-seven years of age and is general secretary of Insurance Department, Supreme Lodge, Knights of Pythias, and has been such from November 15, 1910. For eight years prior to that time he was in charge of Certificate Department of the Insurance Department. His duties as general secretary are to keep and have charge of all books and records, to receive and deposit funds, liquidate accounts, of Insurance Department, conduct correspondence with secretaries of sections and present all claims to executive committee of Insurance Department. (Fols. 592-595.)

He is acquainted and familiar with books and records of the Insurance Department, not only by reason of his employment in such department since 1903 but also on account of the fact that since his election as secretary he has made a careful and exhaustive examination of the records and books of the Insurance Department. (Fol. 595.)

He has in his custody and under his care as general secretary the official records and minutes of the Supreme Lodge, Knights of Pythias as far as same pertains to the Insurance Department, and all the biennial reports and accounts made by the Insurance Department to the Supreme Lodge since 1878 (fol. 596), the original copies and minutes of the certificate or certificates of association of the

Supreme Lodge, Knights of Pythias (fol. 597), and also has possession of amended certificates (fols. 613-626) and particularly has possession and custody of minutes, proceedings, and journal of session of Supreme Lodge held in 1888 (fol. 666) in 1892 (fol. 670), in 1901 (fol. 684), in 1910 (fols. 697-736.)

It appears that the first certificate of association was filed in the District of Columbia, August 5th, 1870. (Fols. 597-612.) The articles of association were amended October 5, 1875. (Fols. 613-626.)

Another amended certificate was filed March 7, 1882. (Fols. 627-638.) The defendant was re-incorporated June 29, 1894, by a special act of Congress which will be found in 28th U. S. Statutes at Large. (Pages 96, 97.) This act was further amended June 7, 1900, by a special act of Congress which will be found in 31st U. S. Statutes at Large (page 708, chap. 861), and was again further amended by a special act of Congress approved February 26th, 1907, and found in U. S. Statutes at Large of the 59th Congress, vol. 34, part 1, page 934. (Fol. 639.)

The act of incorporation of June 29, 1894—29 U. S. Statutes at Large, 96 and 97—reads as follows:

"AN ACT TO INCORPORATE THE SUPREME LODGE OF THE KNIGHTS OF PYTHIAS.

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress Assembled.

"That George B. Shaw of the city of Eau Claire, State of Wisconsin; William W. Blackwell of the city of Henderson, State of Ken-

tucky; Walter B. Richie, of the city of Lima, State of Ohio; Robert L. C. White, of the city of Nashville, State of Tennessee; Philip T. Colgrove, of the city of Hastings, State of Michigan, and Tracy R. Bangs, of the city of Grand Forks, State of North Dakota, officers and members of the Supreme Lodge, Knights of Pythias, and their successors, be and they are hereby incorporated and made a body politic and corporate in the District of Columbia by the name of 'The Supreme Lodge, Knights of Pythias,' and by that name it may sue, and be sued, plead and be impleaded, in any court of law or equity and may have and use a common seal, and change the same at pleasure, and be entitled to use and exercise all the powers, rights and privileges incidental to fraternal and benevolent corporations within the District of Columbia.

"Sec. 2. That the said corporation shall have the power to take and hold real and personal estate, not exceeding in value one hundred thousand dollars, which shall not be divided among the members of the corporation, but shall descend to their successors, for the promotion of the fraternal and benevolent purposes of said corporation.

"Sec. 3. That all claims, accounts, debts, things in action or other matters of business of whatever nature now existing for or against the present Supreme Lodge, Knights of Pythias, mentioned in section 1, of this act, shall survive and succeed to and against the body corporate and politic hereby created, provided that nothing contained herein shall be construed to extend the operation of any law which provides for the extinguishing of claims of contracts by limitations of time.

"Sec. 4. That said corporation shall have a constitution and shall have power to amend the same at pleasure, provided, that such con-

stitution or amendments thereof do not conflict with the laws of the United States or any State.

"Sec. 5. That said corporation shall not engage in any business for gain; the purposes of said corporation being fraternal and benevolent.

"Sec. 6. That Congress may at any time amend, alter or repeal this act."

Approved June 29, 1894.

(28 U. S. Statutes at Large, 96 and 97.)

The special act amending above act, approved June 7, 1900, authorized meetings of Supreme Lodge outside of District of Columbia, and amending act of February 6, 1907, removed any limitation upon amount of personal or real property held by defendant for the fraternal and benevolent purposes of the corporation.

The first certificate of incorporation conferred upon defendant power to alter and amend its constitution and by-laws at will. (Fol. 610.) The act of incorporation approved June 29, 1894, set forth above, did provide by section 3 thereof that defendant should survive and succeed to all matters of whatever name or nature of former corporation and by section 4 of said act set out above defendant was authorized to have a constitution with power to amend the same at pleasure. The charter of said original corporation, Supreme Lodge, Knights of Pythias, expired August 5, 1890, and the order had continued in existence as a voluntary unincorporated association.

The Supreme Lodge, Knights of Pythias, is composed of some fifty-two duly elected and qualified representatives from the Grand Lodge of the Order, there being a Grand Lodge from each State and Territory in the United States, from the District of Columbia and from some of the provinces

of Canada. The Supreme and all past chancellors, are *ex-officio* members of Supreme Lodge. Some of the Grand Lodges have more than two representatives to Supreme Lodge, depending upon extent of membership in a particular jurisdiction. The Grand Lodges in turn are composed of duly elected and qualified representatives of subordinate lodges in the particular jurisdiction of the Grand Lodge. The subordinate lodge is the local organization of the order composed of particular members of the Knights of Pythias that belong to it. (Fols. 655-658.)

The Supreme Lodge holds biennial sessions. (Fol. 661.) The insurance feature of the Supreme Lodge, Knights of Pythias, was first designated as the Endowment Rank; its designation was changed to "Insurance Department." The corporate name is Supreme Lodge, Knights of Pythias." (Fols. 640-650),

The Endowment Rank, was, and the Insurance Department, is, carried on for the benefit of its members and their nominated beneficiaries solely and not for profit in any way. (Fol. 662.)

The insurance branch of defendant is controlled and governed by the Supreme Lodge, Knights of Pythias, through properly enacted by-laws, it is under the direct control of a Board of Control, a body of nine men elected by the Supreme Lodge, and in addition to these nine elective members the Supreme Chancellor and Past Supreme Chancellor are *ex-officio* members of said Board of Control. (Fols. 660, 661.)

The defendant society, in its Insurance Department, is composed of an unlimited number of members, organized into subordinate bodies termed

Sections, and whose obligations and rights of beneficiaries are defined by class or plan to which an individual member may belong. (Fols. 662, 663.)

Membership in the Insurance Branch of defendant could only be attained by a member who was in good standing in some subordinate lodge of Knights of Pythias. (Fol. 640.)

There are at present time approximately 4,330 sections in force, composed of members of defendant order who desire to participate in the insurance feature of defendant. (Fols. 658, 659.)

The insurance feature of defendant was first started in 1877, it being known as Endowment Rank. Its members were divided into two classes, a First Class, composed of members who desired insurance in amount of \$1,000, and a Second Class, whose members applied for insurance in amount of \$2,000. A Third Class was formed in 1880, composed of members whose ages ranged from fifty to sixty years, and the members of such Third Class being limited in amount to \$1,000 of insurance. (Fols. 640-642.)

The assessments were at that time fixed at a monthly assessment of \$1.00 per month for each \$1,000 of insurance held by a member, but more than twelve assessments per year could be lawfully required of members by levying extra assessments. (Fol. 643.)

A Fourth Class was created in 1884, to which most of members of foregoing three classes transferred. In this class the assessment plan was supplanted by the ante-mortem plan. The members were assessed upon the graded system of assessments based upon the expectancy of life. No known table of mortality rates was used in fixing

the rates of assessment of members of this Fourth Class. (Fols. 644, 645.)

The members of First, Second and Third Classes, as previously constituted, were invited to transfer to said Fourth Class, and were so transferred at their original entry age and without medical examination. If transferred from old classes prior to July 1, 1885, they were rated to August 11, 1888, based upon original entry; after August 1, 1888, they were rated at the age of transfer. (Fol. 646.)

The rates established in 1884 remained in force until March 1, 1894, when dues of five cents per thousand were added to rates then in force. The rates were again readjusted September 1, 1901. (Fol. 647.)

In 1901, the rates were adjusted upon the basis of National Fraternal Congress table, but no provision was made for expenses and the by-law fixing rates set off fifteen per cent thereof for expense purposes. In addition, members were re-rated at their age of original entry, instead of at their attained ages. The mortality experience of the Endowment Rank up to that time has been in excess of that employed in the National Fraternal Congress table. No reserve had been accumulated in 1901, when these rates were established. As a matter of fact there was a deficit of about one-half million dollars. (Fols. 648-650.)

Since 1884, there has been one additional class created. It is known as the Fifth Class and was created at the session of the Supreme Lodge in 1906, and became operative on January 1, 1907. (Fol. 651.)

This Fifth Class was organized by the Statutes of the Supreme Lodge and membership therein was

open to all members of Knights of Pythias under sixty years of age who could pass a suitable medical examination.

"THE MEMBERS OF THE THEN EXISTING FOURTH CLASS WERE PERMITTED TO TRANSFER TO THE FIFTH CLASS AT THEIR ATTAINED AGE WITHOUT MEDICAL EXAMINATION AND THE LIMIT AS TO AGE REQUIREMENTS DID NOT APPLY TO FOURTH CLASS MEMBERS WHO DESIRED SUCH TRANSFER."
(Fol. 652.)

Rates based upon the American Experience Table of Mortality with an interest assumption of three and one-half per cent were used in determining amount of contribution of the members of the Fifth Class. There was an expense loading provided to the extent of thirteen per cent of premium. (Fol. 653.) When the Fifth Class became operative January 1, 1907, there was on hand a mortuary fund of \$1,345,259.35. This sum was left and remained to the credit of those members who remained in the Fourth Class. (Fol. 654.)

The rates of contribution of members of Fourth Class were changed by Supreme Lodge at its session in August, 1910, and such changes became operative January 1, 1911. (Fols. 696-698.)

The by-laws affecting rates of members of Fourth Class enacted in 1910, were contained in Defendant's Exhibit "B." (Fol. 699.)

Said Exhibit "B" or pertinent part thereof consisted of section 468, 390-401, 464, 479, 490, 491, 509, of the statutes and by-laws set out in full in defendant's Exhibit "C." (Page 242.)

Section 468 (fol. 1129) states avowed purpose of by-laws enacted to be the payment in full of every certificate held by a member of the fourth class.

Subdivision A of said section applies said rates to all future applicants to fourth class. (Fol. 1130.)

Subdivision B applies rates enacted to present members of fourth class. (Fol. 1132.)

The table of rates as established indicates that a person of attained age of 58 years, if he remained a member of Fourth Class until December 31, 1910, would thereafter, to continue his certificate in force, pay at the rate of \$4.90 for each \$1,000 of insurance. This would amount to \$14.70 upon \$3,000 of insurance and plaintiff in court below was of the attained age of 58 years, held a certificate for \$3,000 and continued as a member of insurance department up to December 31, 1910. (Fols. 1135-1137.)

The remaining sections of defendant's Exhibit "B" authorized the many options set forth in Plaintiff's Exhibit "F."

It is not disputed that plaintiff not only refused to pay the assessment provided by the by-laws enacted in 1910, in force January 1, 1911, but that he also refused to accept any options offered by defendant to plaintiff in lieu of such payment.

The laws set forth in Exhibit "B" of defendant were adopted by over a two-thirds vote of members of Supreme Lodge present. There were four representatives from New York State present. (Fol. 700.)

The mortuary receipts for year ending December 31, 1910, were \$494,957.08 and death losses during said period amounted to \$880,000, leaving a Fourth Class mortuary fund December 31, 1910, of

\$541,766.98. (Fols. 703-708.) The mortuary receipts for year ending December 31, 1911, were \$279,516.10 and death losses incurred for same year amounted to \$312,643.66, leaving on December 31, 1911, a Fourth Class mortuary fund of \$506,834.64. (Fols. 709-715.)

The mortuary fund has practically decreased monthly each month from \$675,800.85 on August 31, 1910, to \$506,834.64 on December 31, 1911. (Fols. 722-723.)

In January, 1911, it became necessary to transfer money from expense fund to mortuary fund to amount of \$38,294.42. (Fols. 732, 733.)

Extra assessments to amount of one regular assessment were levied July 15, 1892; May, 1901, February, 1909, September, 1909, March, May and July, 1910. (Fol. 734.)

Since plaintiff has been a member of the Insurance Department, he has contributed to mortuary fund the sum of \$856.17 net. (Fols. 724-731.)

The witness Powers identified defendant's Exhibit "C" as being the constitution and by-laws in effect after January 1, 1911. (Fol. 736.)

He also identifies defendant's Exhibit "B" as the by-laws adopted in 1910 under and in pursuance of which plaintiff's rate of assessment was increased. (Fol. 699.)

Defendant's Exhibit "B" was a pamphlet containing sections 468-390, 401, 464, 479, 490, 491, and 509 of statutes and by-laws as set out in full in defendant's Exhibit "C" under same section numbers. (Fols. 961, 963.) Section 468 (fols. 1129-1154), section 390 (fol. 998), section 401 (fols. 1024-1026), section 464 (fols. 1120-1123), section 479

(fols. 1198, 1199), section 490 (fols. 1223-1229), section 491 (fols. 1230-1232), section 509 (fols. 1254-1256).

Defendant's Exhibit "C" is printed at length at pages 242-320.

No objection has at any time been raised as to the competency of or the sufficiency of the proof of said Defendant's Exhibit "B" and "C."

It also appears from testimony of witness Powers that rate of assessment upon members of Fourth Class was increased in 1901; that such increase was provided for by an amended by-law passed by unanimous vote of Supreme Lodge, then in session; that such by-law raised plaintiff's assessment to \$4.80 per month for \$3,000 insurance and that such rate so provided in 1901 was to continue in force unless Supreme Lodge otherwise provided. (Fols. 684-696.)

Plaintiff admits he paid this increased rate from 1901 down and admits he so paid such increased rate in pursuance of information conveyed to him by Plaintiff's Exhibit "E."

Exhibit "E" plainly informed him, if he read it, that rates therein provided were in pursuance of a by-law.

The by-law passed was to go in effect August 31, 1901. (Fol. 696.) Exhibit "E" of plaintiff's is dated July 15, 1901. (Fol. 415.) Nothing whatever is said about a reserve fund in Plaintiff's Exhibit "E."

Plaintiff, by making payments in pursuance of the amended by-law of 1901, acquiesced in and consented to be bound by this by-law and the whole of it, not alone the increased assessment in such by-law as it was then established but also to the other

portion of the by-law that provided the Supreme Lodge could change rate of assessment.

The portion of testimony of witness Powers which presents one of the questions for review is that part thereof which has to do with the establishing of Defendant's Exhibit "A" as being the by-laws in force in 1889, the time plaintiff made his application for insurance.

He testifies that he has in his possession the original minutes, records and journal of the session of the Supreme Lodge, Knights of Pythias, held in June, 1888. That at such session the by-laws set out in Plaintiff's Exhibit "C" which were the by-laws adopted in 1886 were repealed and that in June, 1888, a constitution and by-laws were adopted and promulgated to become effective August 1, 1888, by a unanimous vote of Supreme Lodge, there being one hundred and seven representatives present and that Defendant's Exhibit "A" contains a true and correct copy of all the constitution and by-laws adopted by Supreme Lodge in June, 1888, effective and in force from August 1, 1888. (Fols. 664, 669.)

Defendant's Exhibit "A" is printed at length at pages 208-240.

Defendant's Exhibit "A" purports on its title page to be:

" CONSTITUTION
OF THE
ENDOWMENT RANK, KNIGHTS OF PYTHIAS
OF THE WORLD

ALSO

GENERAL LAWS AND REGULATIONS
Adopted by the Board of Control July, 1888."
(Fol. 831.)

It is composed of two parts, one part being the constitution (fols. 832-925) and the other portion being the general laws, rules and regulations governing the rank. (Fols. 926-960.) In this it is similar to Plaintiff's Exhibit "C," there being two portions to that exhibit of plaintiff.

Section 6 of Article 1 of said Exhibit "A" defines one of the powers reserved to Supreme Lodge as follows:

"Section 6. To create, hold and disburse through a Board of Control, the funds of the Endowment Rank under such regulations as it may deem necessary."

This Section is identical with similar section of Plaintiff's Exhibit "C" (fol. 281), other than in Defendant's Exhibit "A" the power so reserved is to be exercised through a Board of Control.

Section 1 of Article IV of Defendant's Exhibit "A" reads as follows:

"Section 1. Each member of the Endowment Rank shall on presenting himself for obligation pay to the secretary of the section in accordance with his age and the amount of endowment applied for, a monthly assessment, as provided in the following table, and shall continue to pay the same amount each month thereafter as long as he remains a member of the Endowment Rank, **UNLESS OTHERWISE PROVIDED FOR BY THE SUPREME LODGE, KNIGHTS OF PYTHIAS OF THE WORLD.**" (Fol. 865.)

Then follows a table of assessments. This Section is identical with article and section of same number set forth in Plaintiff's Exhibit "C" (page 78) with the exception of words in italics which are found only in article and section as set forth in Defendant's Exhibit "A."

Under provisions of Article VIII of Defendant's Exhibit "A" a Board of Control is created which takes entire charge of and manages Endowment Rank. (Fols. 882-904.) This is an enlargement of the powers of Board of Control as provided for in Plaintiff's Exhibit "C," Article XIII. (Fols. 350-352.)

There is no duplication of Section 5 of Article V of Plaintiff's Exhibit "C" (fol. 36) under same article and section numbers in defendant's Exhibit "A." In fact there is no Section 5 of Article V in Defendant's Exhibit "A." (Fol. 877.)

The powers reserved to the Supreme Lodge in Section 5 of Article V of Plaintiff's Exhibit "C" are in Defendant's Exhibit "A" reserved to the Board of Control by provisions of Section 9 of Article VIII which reads as follows:

"Section 9. The Board is hereby authorized to enact general laws, rules and regulations in conformity with this constitution; for the government of Sections, and the membership of the Endowment Rank, and alter and amend such general laws, rules and regulations when in their judgment the needs of the Rank require such action." (Fols. 891-892.)

The last article of Constitution set forth in Defendant's Exhibit "A" but one is designated XV and reads as follows:

"ARTICLE XV.

"AMENDMENTS.

"THESE LAWS MAY BE ALTERED OR AMENDED AT ANY REGULAR SESSION OF THE SUPREME LODGE, KNIGHTS OF PYTHIAS OF THE WORLD BY A TWO-THIRDS VOTE." (Fol. 925.)

This Section is identical in context with Article XI of Plaintiff's Exhibit "C." (Fol. 354.)

Article XVI of Constitution set forth in Defendant's Exhibit "A" reads as follows:

"ARTICLE XVI.

"SECTION 1. ALL ACTS OR PARTS OF ACTS INCONSISTENT HEREWITH ARE HEREBY REPEALED." (Fol. 925.)

This last provision clearly annulled the constitution and by-laws set forth in Plaintiff's Exhibit "C."

Article X of general laws set forth in Defendant's Exhibit "A" reads as follows:

"ARTICLE X.

"AMENDMENTS.

"The provisions of these general laws may be altered or amended at any regular session of the Supreme Lodge, Knights of Pythias of the World." (Fol. 960.)

This Section is identical with Article XII of Plaintiff's Exhibit "C" (fol. 397) with the exception that in Plaintiff's Exhibit "C" such Article XII provides that amendments must be made by a two-thirds vote while in Defendant's Exhibit "A" the requirement that such amendment shall be by a two-thirds vote is omitted.

There is also contained in Section 17 of Article XIII of the Constitution, set forth in Defendant's Exhibit "A" the following matter which is not found in Plaintiff's Exhibit "C" at all:

"Section 17. The Board are hereby empowered and directed to re-rate the members

transferred from the First, Second and Third Classes under resolutions passed by the Supreme Lodge, at the session of 1884, permitting such members to enter the Fourth Class at the age they were when becoming members of the First, Second and Third Classes. The Board is instructed to re-rate this class of membership so as to require them to hereafter pay as of their age when becoming members of the Fourth Class, said re-rating to take effect at such date as the Board shall prescribe, on and after the 1st day of August, 1888, AND THE BOARD IS FURTHER EMPOWERED TO RE-RATE THE PRESENT TABLES OF THE FOURTH CLASS APPLYING IT TO ALL MEMBERS. SHOULD SUCH ACTION BECOME NECESSARY FOR THE PROPER PROTECTION AND PERPETUITY OF THE RANK." (Fols. 897-898.)

Special or extra assessments were also provided for in Defendant's Exhibit "A." (Fol. 880.)

The evidence of witness Powers was introduced on the part of the defendant to establish the contract of insurance between plaintiff and defendant; on that point being particularly directed to sustain defendant's contention that defendant's Exhibit "A" and not Plaintiff's Exhibit "C" set forth the by-laws and regulations in force when application was made for the insurance policy issued, and therefore formed part of the contract; the further fact that under and by virtue of corporate charter, and contract of insurance issued, defendant had the right to increase its rates in a manner in such constitution provided; the further fact that the changed rates complained of were established as far as the procedure of defendant in making such change was concerned, in a lawful and proper man-

ner; the further fact that defendant in 1901 passed a by-law which increased its rates of assessment and also stipulated and reserved power of future increase, to which by-laws plaintiff consented; and also gave some evidence as to financial standing, receipts and resources of Fourth Class bearing upon the question of its future existence and the possibility of said Fourth Class of meeting the obligations of its outstanding policies as they matured as death losses; such latter evidence clearly demonstrating that the recent history of the Fourth Class was one of progressive increase of liabilities and progressive decrease of resources or receipts, pointing inevitably to insolvency in the near future if the then present method of creation of funds to meet the death claims was to continue in force.

The defendant has contended in its defense that it had the authority to increase its rates upon members of Endowment Rank when the necessity therefore arose, when such action, that is, increasing rates of assessment, was necessary to insure the protection of all its policyholders in providing funds to discharge in full the obligation of payment contained in each individual policy.

The fact that the necessity did exist and that the new rate of assessment levied by defendant upon members of the Fourth Class, was no more than was necessary to meet the condition born of the necessity of establishing an increased rate, was set forth in testimony of witness Wolfe for defendant.

Witness Wolfe was especially qualified to advance a competent opinion upon the questions submitted to him as to necessity and reasonableness of rate of assessment established by defendant in 1910. He has been engaged in actuarial work for

over eighteen years. He has written several books pertaining to insurance matters and has been employed as actuary by many of the States of the United States. (Fols. 760-763.)

He is not a member of defendant order. (Fol. 763.)

His opportunity for obtaining data upon which he could base an opinion upon questions submitted him in connection with necessity of action of defendant in 1910, in raising its rate of assessment was through repeated examination of books and records of insurance department of defendant.

He has been a consulting actuary for defendant since 1905. (Fol. 764.) In his work as such actuary since that time, he has investigated the condition of insurance department, the investigation including the formulation of rates of department, valuation of certificates, its annual accountings, the determination of assessments that could be waived, the necessity of increasing assessments and the amount of increase that would be reasonable and necessary. In making his investigation he examined records in home offices of department in Chicago and Indianapolis. He examined all books and records which referred to membership, payments made by members, record books pertaining to history of department, pertaining to its funds, in fact all records necessary for him to reach a conclusion upon questions submitted to him. Through this investigation and examination he became acquainted with the entire history of insurance department, the history of first, second, third, fourth and fifth classes, the number of members, their attained ages, the amount of outstanding insur-

ance, the number of deaths in each particular year, the receipts each year from assessments. (Fols. 763-771.)

He was consulted as an actuary upon the necessity and reasonableness of rates established on members of Fourth Class by Supreme Lodge in 1910. (Fol. 774.) He is acquainted with the history of the Fourth Class, the rates paid by its members, mortuary fund of said class in January, 1910, and in August, 1910, and its liabilities on said dates. (Fols. 772-773.) One of his first acts in 1906, when he was consulted as actuary was to inquire into early history of insurance department with a view of determining adequacy of rates of assessment. From such inquiry it developed that insurance branch of defendant, in common with other similar organizations, was started by men unfamiliar with insurance matters and had failed to realize that cost of furnishing insurance protection did not remain stationary, but increased as members became older. In 1884, a change was made, but rates then adopted were inadequate. In 1901, a change was again made, but again mistakes were made, three mistakes in particular being that in 1901, when increase in rates was adopted, first, rates were based upon a table of mortality which did not represent mortality of insurance branch of defendant; second, members were re-rated at age of original entry instead of attained age, and no reserve fund had been set aside in the past to take care of this difference in age; third, no allowance was made for expenses of rank, a certain percentage being deducted, from moneys raised by assessment for expense purposes when in fact the entire sum raised by assessments was inadequate to provide for a sufficient mortuary fund alone. (Fols. 788-794.)

These conditions prevailed until 1906, and at that time it was pointed out to defendant that an early disintegration of insurance branch of defendant would inevitably follow unless something was done in the way of providing an adequate mortuary fund by means of increased rates of assessment. (Fol. 795.)

Therefore, at that time adequate rates were adopted, the Fifth Class formed, and members of other classes invited to join Fifth Class, without medical examination. In the establishing of rates for Fifth Class, it was taken into consideration that the primary object of society was to secure to beneficiaries of members a sum certain and rates were provided that made such object possible, the amount realized by such rates being sufficient to adjust current death losses and also provided a reserve fund to offset increased liability by reason of increasing age of members and also sufficient to meet expenses of operation. There was provision made for a general accounting each year and if on such accounting there was a surplus over such amount as was necessary for safe operations of defendant, such surplus was distributed to members of Insurance Department through medium of waived assessments. That plan as applied to Fifth Class was successful from 1907 to 1911. During that period two assessments were waived each year with exception of 1909, when only one assessment was waived. (Fols. 796-797.)

The amount of mortuary fund of Fourth Class, in spite of extra assessments, decreased progressively from December 31, 1908, when there was on hand the sum of \$1,274,474 to July 31, 1910, when there was on hand the sum of \$700,930, a

decease of one-half million of dollars in approximately eighteen months.

It is true, that as a member becomes older, the amount the Insurance Department has on hand to protect his contract ought to be larger. The mortuary fund of insurance branch of defendant instead of becoming larger, was, in fact, decreasing, and rapidly at that, and this fact demonstrated the necessity of action of defendant in increasing rates in 1910. (Fols. 797-801.)

The rates paid by members of the Fourth Class prior to time rates were changed in 1910, were inadequate to render certain the insurance protection to members at a time when they were old and needed it most, and would be unable to procure insurance protection from other organizations. It became absolutely necessary as a matter of equality and justice to devise some plans to render payment of each certificate certain. (Fol. 802.)

No other method than that adopted by defendant in increasing rates in 1910 would have saved Fourth Class from insolvency and no lower rates than those adopted would have been safe. (Fols. 810-816.)

Experience has demonstrated that an attempt to meet the conditions of inadequacy of funds of Fourth Class by levying of extra assessments would have resulted in a lapse of the good risks and poor risks would be left behind, causing mortality to rise to such an extent as would wreck the institution. (Fol. 809.)

The cost of insurance as determined in a fraternal society is the sum total of the face value of policies paid during a certain period divided equitably among all members of the order. Since

plaintiff in court below joined the order he has paid in the sum of \$856.17 for mortuary purposes and \$151.08 for expense purposes. The cost of protection furnished to him during that time was \$877.34, hence plaintiff has not contributed enough to pay cost of his insurance. (Fol. 818.)

Insurance companies have accepted without question risks up to the age of sixty years. (Fol. 823.)

The foregoing statement practically sets forth the entire case of plaintiff and defendant. The plaintiff took no evidence to rebut defendant's evidence.

POINT I.

It was error to construe as part of the contract of insurance between the parties any other by-laws than those contained in Defendant's Exhibit "A."

The trial court in the decision of this cause arrived at its conclusion as to force an operation of the contract of insurance in issue herein by construing as part of such contract, the by-laws set forth in Plaintiff's Exhibit "C" it had determined as is gathered from opinion that the defendant had not established by competent proof that Defendant's Exhibit "A" was the constitution and by-laws adopted in 1888. (Fols. 1331-1348.)

The Circuit Court of Appeals, also so construed contract of insurance between the parties hereto, as is to be gathered from the opinion of said court read on affirmance of the decree of the District Court, but based its action in so construing Ex-

hibit "C" of plaintiff as part of the contract through the force of an estoppel created by the acts of the agents of appellant. (Opinion of Circuit Court of Appeals, pages 395-6.)

The defendant offered to support its contention that by-laws set forth in Exhibit "A" were what they purport to be, the evidence of witness Powers.

He is general secretary of Insurance Branch of defendant. He has charge of all the books and records of the Board (fol. 594) and he has under his care and custody the official records or minutes of the Supreme Lodge. (Fol. 596.) He has in his possession the original minutes, records and journal of Supreme Lodge, showing the adoption of constitution in 1888. That Exhibit "A" contains a true and correct copy of constitution and by-laws adopted in 1888 and that Plaintiff's Exhibit "C" or rather by-laws set forth in Plaintiff's Exhibit "C" were repealed in 1888. (Fols. 664, 669.) It also appears from Article XVI of said Exhibit "A" of defendant that all acts or parts of acts inconsistent therewith were repealed. (Fol. 925.)

At the time this testimony was offered no objection was made to same, the plaintiff not appearing upon the examination of witness Powers. (Fol. 591.)

Plaintiff admitted due service of notice of taking testimony of witness. (Fol. 588.)

His testimony was filed June 3, 1912. (Fol. 713.)

Plaintiff had twenty days after June 3, 1912, to rebut testimony if it was not true. (Fol. 210.)

The hearing upon all proofs was set down for July 15 (fol. 210), and plaintiff had time from June 3, 1912, to rebut testimony if not true or to move to suppress deposition.

In addition to that, attorney for defendant furnished to attorney for plaintiff a complete copy of deposition of witness Powers, including all exhibits attached to said deposition on the same day or day after, deposition of witness Powers was filed.

No motion was made to suppress deposition or any of testimony therein.

No objection to receipt of these by-laws as evidence was printed on record.

The objection was first urged on trial after all proofs were closed and presumably in brief of plaintiff filed with trial court, no ruling being made when objection was first urged upon hearing July 15, 1912, and during the argument of case at that time.

That the by-laws in force at the time contract of insurance was made are competent evidence needs no argument.

There is no contention that the by-laws offered in evidence are not in fact by-laws adopted in 1888. The evidence of plaintiff as to by-laws introduced by him does not contradict evidence of witness Powers. They offered no competent testimony to prove their Exhibit "C." As noted in statement of facts plaintiff says he does not know who gave his Plaintiff's Exhibit "C" and Fredendall has no recollection at all about the matter. The inconsistency of plaintiff's objection is clearly apparent when we consider that he is urging the court to consider as part of his contract the by-laws set forth in Exhibit "C" of plaintiff where proof shows plaintiff does not know where he got them and the section secretary does not remember transaction and simply says that Exhibit "C" was a copy of their by-laws and does not state they

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were a copy of by-laws in force at time plaintiff received his policy, and Exhibit "C" is only a copy, and then as far as defendant's proof is concerned contends that the by-laws set forth in Exhibit "A" of defendant are not proven when the evidence discloses that they are identified and sworn to by the secretary of defendant who is presumed to have and in fact has the actual custody and possession of the original minutes and records of defendant showing the adoption of constitution and by-laws set forth in Defendant's Exhibit "A." Plaintiff's Exhibit "C" is a copy proven by no one.

Defendant's Exhibit "A" is a proved copy of the minutes and records and acts of a corporation of which plaintiff was a member, the authentication of same being made by the officer who was presumed to have and in fact did have the actual possession of original minutes of corporation which enabled him to verify exhibit offered in evidence.

These by-laws were adopted twenty-eight years ago. It is barely possible that no one is alive who was present at that time.

They were in effect read in the evidence. It is true that the transcribing of testimony was not taken down by witness reading them to such person as took deposition word for word. If that course were taken they would still be a sworn copy and the practical and proper way was the method in fact adopted by defendant, that is, identifying a proved copy and attaching it to a deposition as an exhibit.

The objection was not to the competency of the proof but simply as to a formality. These books were the original records of defendant at its office in Indianapolis, Ind. The trial was to be had at

Norwich, N. Y. Reading records into record of case was what was done by witness Powers and this Exhibit "A" of defendant was read into record by identifying same as a true and correct copy of by-laws adopted in 1888 and attached such copy to his deposition as an exhibit. The witness who authenticated Exhibit "A" was in a position to have accurate knowledge of the matters concerning which he gave testimony, being secretary of defendant, presumed to have and from his sworn evidence actually having possession of original records of which exhibit objected to was a proven copy.

The laws of the order in force at time of trial of this action were admitted in evidence without objection upon same proof as was offered by appellant in establishing Defendant's Exhibit "A" in court below (fols. 735, 736), such laws being set forth at pages 242-320 of record.

The last statute being supreme statute 519 (p. 320, fol. 1278), provides as follows:

"The laws of the order as herein enacted, with any and all amendments thereto hereinafter enacted by the Supreme Lodge, and all rules and regulations of the Board of Control, as the same exist, or may from time to time be adopted, shall be and constitute part of the contract of insurance between members of the Insurance Department and such department, and shall be binding upon such members."

Supreme Statute 517 of these same laws provides:

"A printed copy of these statutes, duly certified by the General Secretary of the Insurance Depart-

ment over his signature and under the seal of the Board, shall be received and accepted as all the laws governing the Insurance Department, by all members of the Insurance Department, by their beneficiaries, by all persons claiming rights under any benefit certificate, and in evidence in any suit in law or equity, but without further proof of their lawful passage, any rule of evidence to the contrary notwithstanding." (P. 319, fol. 1275.)

The evident purpose of the foregoing quoted statute was to relieve appellant by force of an admission on part of any litigant of making formal proof of the successive steps in adoption of laws of the Order. It does not attempt to change any law of evidence but is a stipulation as to what shall constitute the necessary authentication of laws of appellant to permit their being received in evidence. It is in effect a waiver of formal proof, and was a valid and binding agreement and entitled to sanction of the court particularly in case at bar.

The by-laws of 1888 were authenticated by general secretary of insurance department, under his oath, he, at the time, giving testimony in a judicial proceeding and his testimony wherein he verifies the by-laws of 1888, is, after being reduced to writing, read over to and subscribed by him. The statute above quoted was complied with in substance and spirit. Parties may agree in advance as to what preliminary proof may be deemed to have established the admissibility of writings as evidence. The only objection to receipt of by-laws of 1888 as evidence was as to formality of proof interposed at trial.

Under the circumstances of the case at bar, the by-laws of 1888 being Exhibit "A" of defendant in

court below were sufficiently authenticated as being part of contract of insurance between the parties.

The plaintiff has no doubt Exhibit "A" of defendant is exactly what defendant contends it is. The court will bear in mind this defendant is a fraternal society with its biennial meetings of its Supreme Lodge. The proceedings of said Supreme Lodge were had with no degree of secrecy as far as plaintiff or any of its members were concerned. It had its printed report of its conventions and sessions. If Powers' testimony was false plaintiff would have been in a position to controvert it. In addition to that plaintiff was in no sense surprised by the main features of difference between by-laws set forth in Plaintiff's Exhibit "C" and Defendant's Exhibit "A" viz., the fact the Defendant's Exhibit "A" in its Article IX states rates were to prevail unless otherwise provided by Supreme Lodge, and fact that in Defendant's Exhibit "A" the defendant through its Board of Control was authorized to re-rate present members of Fourth Class when such action was necessary for proper protection and perpetuity of the Rank. The answer apprised him of contention of defendant as to these matters. (Vol. 64.)

The plaintiff, at the time he raised objection to the competency of Exhibit "A" of defendant, was in a position of a litigant, who could have reasonably anticipated the introduction of said evidence, who admits he received due notice of the taking of such evidence, who failed to appear upon taking of such evidence and object to same when his objections could have pointed out any defect in foundation or manner of offering said evidence which defendant could obviate at the time; who had opportunity to rebut said evidence if it was untrue; who had op-

portunity to suppress said testimony if it was incompetent; and who waits to make his objection after time for taking testimony has expired and came in at final hearing when, if objection prevailed, as it did prevail, would operate, as it did operate, to deny unto defendant the opportunity to present its defense and disclose unto the court the true contract between plaintiff and defendant and resulted in rights of defendant being measured in pursuance of a contract to which it never was a party.

The subject-matter of objection of plaintiff was in effect that the sworn copy by the secretary of a corporation presumed to have and actually having possession of records which gave secretary accurate knowledge of matters upon which he testifies of records of such corporation of which plaintiff himself is a member was not competent evidence of acts of such corporation upon a trial had at Norwich, N. Y., where original records were at Indianapolis, Ind., when the substance of testimony was clearly competent, material and relevant and pertinent to issues involved in the trial, that is, as bearing upon what by-laws comprised part of contract which was to be construed by trial court in the decision of the issues involved in the action.

The fact that the defendant had in 1888 adopted a constitution and by-laws, which, by its express terms repealed any and all provisions, in any constitution and by-laws inconsistent therewith was clearly competent as disclosing to the court that Plaintiff's Exhibit "C" was not part of contract of insurance between plaintiff and defendant and as establishing what the contract was, in truth. This is so self evident that a discussion upon that point is needless.

Defendant offers as evidence of this fact the sworn copy of the acts of the corporation of which defendant is a member.

The doctrine as to method of proving books of corporation to establish corporate acts as between members is laid down in American and English Encyc. of Law (2d ed., fol. 9, page 895) as follows:

"The books of a private corporation are admissible between members of the corporation to prove its corporate acts and transactions, for as between them the books are of the nature of public documents," citing.

Hubbell v. Meigs, 50 N. Y., 480.

Peabody v. Speyers, 56 N. Y., 230.

Com. v. Woelper, 3 S. & R. (Pa.),
29, S. Am. Dec., 628; 2 Phil. Ev.
295.

1 *Green Ev.*, Sec. 493.

And as between members of same corporation sworn copies of books of corporation are competent.

Hubbell v. Meigs, 50 N. Y., 480.

Peabody v. Speyers, 56 N. Y., 230.

The matter of competency of copies of by-laws as proven by secretary of corporation was passed upon by Judge Shiras in case of *Zimmerman v. Masonic Aid Association*, 75 Fed. Rep., 236. (Appeal dismissed, 90 Fed. Rep., 832.) That case was an action upon an insurance policy. The copy of the by-laws of defendant was introduced in evidence after being authenticated by secretary of defendant. Objection was made as to their com-

petency as they were only a copy and not the originals. Judge Shiras passing on that, says:

“ His (the secretary's) testimony to the accuracy of the copy was certainly competent and sufficient and the question therefor is narrowed down to the proposition that a proved copy could not be used in evidence, but that it was incumbent upon the defendant to produce the original books, wherein the record of the by-laws is kept, the same forming part of the records of the home office. If it be the rule as is claimed, on behalf of the plaintiff, that the original by-laws themselves must be produced at the place of trial, then it might be placed beyond the power of the defendant to furnish the evidence. It cannot be possible that a corporation can be required to produce its original books or records at every time or place when and where a suit may be pending, no matter how distant from its home office. There may be cases involving special issues, wherein the production of the original books at the place of trial may be necessary to effectuate justice between the parties, but ordinarily in cases like that before the court, copies of the articles or by-laws of a corporation, duly proven, may be received in evidence without requiring the production of the originals before the court.”

The above case squarely decides the question and the reasoning therein is clearly applicable to situation of defendant in offering its proof.

But there is another aspect of the situation which discloses that the rejection of Defendant's Exhibit “ A ” as evidence in this case upon objection of plaintiff was error.

This objection was made at the hearing. Plaintiff took no steps, although he had ample opportunity so to do, to call attention to what he

deemed to be objectionable matters in testimony taken by defendant. He has notice to appear and cross-examine, he has time to rebut evidence, if untrue, and time to suppress deposition. He in no way avails himself of his opportunities. He waits until defendant is in a position where it can take no further proof or obviate any matter which tended to nullify the testimony taken by defendant if there was anything objectionable. The plaintiff by pursuing this course had waived his right to object to testimony taken by defendant.

The Supreme Court has repeatedly announced that conduct on part of a litigant similar to that of plaintiff in failing either to object to evidence when it is offered or moving to suppress what party might deem objectionable testimony in deposition is a waiver of right to object, and that to allow a party for the first time to interpose objections at the trial would amount practically to a fraud upon the party who offered the evidence and such action would in no case be countenanced.

In the case of *York Company v. Central Railroad* (3 Wall., 107), there appeared in testimony taken upon a deposition a copy of a bill of lading. The objecting party had taken no objection to such copy at the execution of the commission, nor had he made a motion to suppress testimony; at the trial he urged his objection that bill of lading was incompetent, no evidence having been offered showing either notice to produce original bill or evidence of its loss, and therefore copy was not the best evidence. The court in disposing of the objection, at page 113, say:

“The objection urged to the introduction of the copy of the bill of lading annexed to the

deposition of the witness was properly overruled. The deposition was taken upon a commission, and in such cases, the general rule is that all objections of a formal character, *and such as might have been obviated, if urged on the examination of the witness*, must be raised at such examination, or upon motion to suppress the deposition. The rule may be different in some State courts; but this rule is more likely than any other to prevent surprise and secure the ends of justice. There may be cases where the rule should be relaxed, as where the deposition is returned at so brief a period before the trial as to preclude a proper examination and prevent a motion to suppress. In this case there was no occasion for any such relaxation of the rule and had the objection been taken before the trial either at the examination of the witness or on motion to suppress, to the proof of the copy without securing the original or showing its loss, the opposite party would have undoubtedly secured the production of the original, if in existence, or, if it be lost or destroyed, been prepared to account for its absence."

Another case announcing same doctrine was that of *Blackburn v. Crawford* (3 Wall., 175).

In that case a deposition was taken in France. One of witnesses examined was a clergyman, who testified as to certain matters from a memorandum made by him, which was a memorandum in which said witness entered or intended to enter each marriage, as it occurred. Neither original memoranda nor an examined or proved copy was attached to the deposition. Objection to testimony was first made at the trial and objection was sustained. In discussing the matter, the court, at page 191, say:

"While the memorandum was within the reach of the party, proof that it did or did not

contain a particular entry could not be received without producing the memorandum itself. In the absence of proof of a further effort to procure the original or failing in that, of an effort to procure an examined copy, this objection, taken at the proper time, would perhaps have been sufficient to exclude the testimony. If it had been notified in season, to the plaintiff in error, that the objection was to be made, he might have obviated the difficulty. The deposition was taken in France under a commission, upon interrogatories by both parties. The objection could not, therefore, be made before the taking officer. It should have been presented before the trial, by a motion to suppress. **AT THE TRIAL IT CAME TOO LATE. IT WAS THEN TO BE CONSIDERED AS FORMALLY WAIVED. THE COURT THEREFORE ERRED IN REJECTING THE TESTIMONY."**

In case of *Doane v. Glenn* (21 How., 33, the court again pass upon the same question, and at page 35, say:

"All of them (the objections) relate to defects and irregularities which might have been obviated by retaking the deposition. It does not appear that any notice beforehand, was given to the counsel of the plaintiffs' that they would be made. In such cases the objection must be noted when the deposition is taken, or be presented by a motion to suppress before the trial is begun. The party taking the deposition is entitled to have the question of its admissibility settled in advance. Good faith and due diligence are required on both sides. When such objections under the circumstances of this case are withheld until the trial is in progress, they must be regarded as waived, and the deposition should be admitted in evidence. This is demanded by the interests of justice. It is

necessary to prevent surprise and the sacrifice of substantial rights. It subjects the other party to no hardships. All that is exacted of him is proper frankness."

The same doctrine is further laid down in cases of:

Insurance Co. of North America v. Guardiola, 129 U. S., 642.

Hickox v. Elliott, 27 Fed. Rep., 830, 843.

McClasky v. Barr, 48 Fed. Rep., 135, 138.

Howard v. Stillwell Mfg. Co., 139 U. S., 205.

Shulte v. Thompson, 15 Wall., 160.

Butt v. Allen, 149 U. S., 489.

Wenans v. N. Y. & Erie R. R. Co., 21 How., 88.

The rule laid down in the foregoing cases has, as its reason, that it is necessary to prevent surprise and promote substantial justice. In this case the failure to enforce the rule operated to deprive defendant of an opportunity to prove the real contract between the parties. The evidence offered by defendant was competent as to the subject-matter thereof. Assuming for the sake of argument that there was some basis to plaintiff's objection, its sole basis would be that some preliminary or formal step in the introduction of evidence objected to was omitted. The allowing of such an objection to prevail when it was first raised at the final hearing, when defendant was not in a position to obviate the objectionable feature of evidence offered, if there was any tenable ground of objection, amounted to a denial of justice to defendant and under cases above cited was clearly error.

POINT II.

The evidence does not warrant a finding that defendant is estopped from contending that its by-laws set forth in Defendant's Exhibit "A" formed part of contract of insurance.

The trial court specifically found that plaintiff relied upon the statements in Plaintiff's Exhibit "C" and Plaintiff's Exhibit "D" when he accepted certificate of insurance, that his assessments would not be increased. (Fol. 1503.)

Throughout the opinion of the trial court printed in the record (Pp. 320-364) will be found statements from which it can be fairly inferred that trial court was of the opinion that Plaintiff's Exhibits "C" and "D" operated to induce plaintiff to make contract of insurance and that statements therein cannot be controverted or avoided by defendant now, particularly in reference to alleged representation that plaintiff's rate of assessment would not be increased. The opinion of Circuit Court of Appeals indicates that they also entertained the same view. (Pp. 395-396.)

A brief analysis of testimony of plaintiff and Fredendall will demonstrate there is not a scintilla of evidence to support an estoppel.

Plaintiff states first that Exhibit "C" was delivered to him about time policy was delivered, at same time. (Fol. 137.) He has kept Exhibit "C" and Exhibit "D" with his policy ever since. (Fol. 138.) He cannot tell who gave him the policy. (Fol. 152.) He never saw Exhibits "C" or "D" before he made application for policy.

(Fol. 155.) He read his application. At time he signed his application, he understood he was to comply with by-laws in force at time he signed the application. (Fols. 156-157.) He knew none of officers of local lodge had right to issue insurance policies. (Fol. 171.)

From his testimony, he read his application for the certificate and distinctly understood he was subscribing to by-laws in force. That he never saw Exhibit "C" or Exhibit "D" until the certificate was delivered. There is not a scintilla of evidence that anything contained in Exhibits "C" or "D" INDUCED HIM TO APPLY for policy or, though it does not enter into question, that anything in those exhibits induced him to keep up his policy. He does not say anything about them at all. He applied for policy with the avowed purpose of having by-laws in force considered as part of his policy. Defendant delivered him a policy which it now asks be construed with by-laws in force at the time as a part thereof. Plaintiff now seeks to avoid the operation of by-laws in force at the time as part of his contract though he subscribed to same, but he insists that a set of by-laws that some one gave after certificate was issued be deemed part of the contract. How Exhibit "C" influenced him no one knows.

As to Exhibit "D" there is nothing to show from whence it came, who delivered it to plaintiff, or that plaintiff was induced to do anything thereby. Fredendall states it was not the custom to give out by-laws as the rule. They were only delivered to those who asked for them. (Fol. 180.) Nothing in the evidence about plaintiff asking for by-laws. Fredendall does not know whether he

gave plaintiff a copy of by-laws or not. (Fol. 181.) He says nothing about Exhibit "D" at all.

Another factor is that whatever estoppel that could be claimed would exist through the acts of a section secretary. They prove no acts of section secretary, but assume for argument that Fredendall gave plaintiff the by-laws of 1886, as set forth in Plaintiff's Exhibit "C." This is not a case where a forfeiture is claimed by reason of failure of insured to pay assessments when due and defense is estopped by reason of the fact that a local officer accepted assessment after it was due. This is an attempt to change the entire contract of insurance and substitute as a part of contract a set of by-laws that did not exist and to base the right to have such changed contract enforced by reason of acts of a section secretary of defendant who was in fact simply a collector of assessments.

It is undisputed that in the case at bar, the power to make, amend and change the by-laws is derived from the act of Congress incorporating the society, by the very constitution itself incorporated in the pamphlet marked Plaintiff's Exhibit "C," vested exclusively in the Supreme Lodge, Knights of Pythias. To hold that a mere local officer elected by the local members whose sole duty consists under the by-laws themselves in the receiving of applications, the delivery of certificates and the collection and remission of assessments, could, by the mere delivery at the time the certificate is delivered of a pamphlet purporting to be the by-laws, make such by-laws for the purpose of that contract, the laws of the society, would be to confer upon such local officer, the power that is specifically reserved by the act of

Congress, and the constitution of the society to the Supreme Lodge itself.

Under the federal charter and the defendant's constitution it is the duty of the Supreme Lodge to preserve uniformity in the working of the Insurance Department and to maintain mutuality between its members. If every section secretary had the power contended for by the plaintiff in this case, to make, alter and change the contract between a member and the society itself, by such a course of conduct, then a situation might easily arise where two members of a society, founded upon mutuality, would, although otherwise similarly situated, occupy different positions with respect to the society to which they belonged. A simple statement of the position of the plaintiff, it seems, contains a complete answer to their contention. There is not a line of evidence here to show that the plaintiff ever saw the by-laws before they were delivered to him; that any representation was made to him as to what the by-laws contained, that he was induced to act by reason of the delivery of the by-laws to him. On the contrary the fair inference is that the delivery of this pamphlet had nothing whatever to do with the plaintiff taking out his insurance in this case. The fact that he did not believe that he had a hard and fast contract by which his rate was to be maintained forever is best shown by the fact that he had paid an increased rate in 1894, without protest, that he stood a further increase in 1901, which materially changed his contract without protest and continued to pay this increase for years without lifting his voice in protest against the exercise of authority on the part of the Supreme Lodge against which he now, at this late date, protests.

The appellant also desires to call his court's attention to what it respectfully submits was a misapprehension on part of the court below as to certain facts commented upon by the court below.

In the opinion of the United States Circuit Court of Appeals affirming decree of trial court, the following language is used:

"It is contended that the Constitution of 1888 with its new provision giving power to increase rates was adopted June first, 1888, effective August first, 1888." That same Constitution, however, prescribed several changes however in the form of the "certificate of insurance." Examination of the certificate issued by the Chicago office and given to Smyth shows that it was in the form prescribed by the Constitution of 1886 without the amendments which the Constitution of 1888 provided. If a year and more after the alleged adoption of the Constitution, the Home office was still using the certificate forms of 1886 unchanged, it would not be surprising that its agents were still supplied only with copies of the Constitution of that year. Certainly the chance of their getting new members would be greater if applicants supposed they were joining under a Constitution which did not provide for an increase of rates." (Page 396.)

From the above quotation it would appear that the Circuit Court of Appeals was under the impression that the certificate issued to appellee in 1889, was in the form prescribed by the Constitution of 1886, and that no modifications of the certificate of insurance provided for in by-laws of 1888 are to be found in certificate issued to appellee in 1889 over a year after adoption of the Constitution of 1888.

A reference to the record and a comparison of the certificate issued to appellee with form of cer-

tificate provided for in both Constitution of 1886 and Constitution of 1888 will demonstrate that certificate issued to appellee in 1889 complied with form prescribed by the Constitution of 1888 and differed from the form prescribed by Constitution of 1886 in those particulars wherein the Constitution of 1888 ruled that the certificate issued under Constitution of 1888 should differ from the certificate issued under Constitution of 1886.

The certificate issued to appellee in 1889 is marked Plaintiff's Exhibit "B" and is printed in full at pages 67-69.

The certificate provided for in Constitution of 1886 is set forth at pages 76-77.

The certificate provided for in the Constitution of 1888 is set forth at pages 215-216.

The Constitution of 1886 provided that certificate should be signed by Supreme Chancellor and attested by Supreme Keeper of Records and Seal. (Page 77, fol. 308.)

The Constitution of 1888 provided that certificate should be signed by the President of Board of Control and attested by the Supreme Secretary. (Page 216, fol. 863.)

The certificate issued to appellee was signed by the President of Board of Control and attested by the Supreme Secretary as provided for in Constitution of 1888. (Page 69, fols. 274-275.)

The following clause in certificate (page 68, fol. 271) is not found either in Constitution of 1886 or Constitution of 1888:

"Provided however that the interest of any beneficiary as designated by said Brother, or the interest of his or her heirs, shall cease and deter-

mine in case of the death of said beneficiary during the life time of such member, and in that case, the benefit accruing under this certificate shall be paid as provided for in Article XII, Section 1, of the Endowment Rank Constitution."

The clause in the certificate (page 68, fol. 272), limiting the amount of benefits paid thereunder, is really the vital and binding feature of the contract. It was that clause which the Constitution of 1888 specifically changed from the form of limitation of payment of benefits as provided for in Constitution of 1886.

The clause in certificate, limiting payment of benefits (page 68, fol. 272), is as follows:

"Provided further, that if at the time of the death of said Brother, the proceeds of one assessment on all members of the Endowment Rank shall not be sufficient to pay in full the maximum amount of endowment, held under this certificate, then there shall be paid an amount less ten per cent for expenses, equal to the proceeds of one full assessment on all remaining members of the Endowment Rank and the payment of such sum to the beneficiary or beneficiaries mentioned herein, shall be in full of all claims and demands under and by virtue of this certificate."

This language is word for word provided for in the Constitution of 1888. (Page 246, fol. 862.)

The Constitution of 1886 enacted that clause in certificate limiting benefits should provide as follows (page 77, fol. 306):

"Provided, however, that if, at the time of the death of said Brother, one monthly payment to the

Endowment Fund by members holding an equal amount of Endowment, shall not be sufficient to pay the amount of Endowment held by said Brother, the benefit to be paid in case of death shall be a sum equal to one payment to the Endowment Fund by each member holding an equal amount of Endowment."

The above clause differs from provisions set forth in Constitution of 1888, and from clause in certificate of the appellee, the clause in the certificate being identical with language stipulated in constitution of 1888.

In other particulars the certificate issued and form of certificates as provided for in both Constitution of 1886 and Constitution of 1888 are practically the same.

The Constitution of 1888 enacted a change in form of certificate as to limitation of benefits and as to who should execute certificate from that provided for in Constitution of 1886. The certificate issued to appellee was executed by officers indicated in the by-laws and contains clause limiting benefits as provided for in Constitution of 1888, differing in these particulars from form of certificate found in Constitution of 1886. It is only in these particulars, practically as far as form of certificates to be issued is concerned, that Constitution of 1888 differs from Constitution of 1886. The certificate issued contains stipulation only found in Constitution of 1888. In view of these facts it is respectfully submitted that the certificate in question confirms contention of appellant that it was issued in conformity with the Constitution of 1888, and in no manner by its stipulations and provisions warranted a finding that it was issued solely in accordance with Constitution of 1886 and failed

to contain the provisions enacted in reference thereto in Constitution of 1888.

It would also appear, from opinion of the Honorable Circuit Court of Appeals, that it was their ruling that appellee was asked to make his contract and did contract upon printed representations that Constitution of 1886 was part of his contract. (Opinion, page 396.)

This is directly at variance with testimony of appellee who, himself, states that he read his application, understood the same and intended that the by-laws in force at that time should become part of his contract and never saw Constitution of 1886 until after his application had been accepted and the certificate delivered to him.

The Exhibit "D" referred to in opinion (page 396), giving it all the probative force claimed for it by appellee, was an advertising circular and the statements therein that "rates do not increase with age" did not in any way nullify a provision in the Constitution, forming part of the contract which authorized the appellant in the exercise of its lawful powers to create the fund of the Endowment Rank to enact legislation, the purpose of which legislation was to create the fund of the Endowment Rank and insure the integrity of its policies.

The plaintiff was bound as a matter of law by the by-laws then existing, whether he knew them or not.

Thomason Corp., 2nd Ed., Sec. 1054.

Niblack, Benefit Soc., 3rd Ed., Secs.

181, 97 and 136.

Bacon, Benefit Soc., 3rd Ed., Sec. 81.

May, Insurance, Sec. 551.

Bliss, Insurance, 2nd Ed., Sec. 776.

Cooley, Briefs on Insurance, Vol. 1,
page 697.

Clark v. Mutual Res. Fund Assoc., 43
L. R. A., 390.

Supreme Lodge v. Knight, 117 Ind.,
389; 3 L. R. A., 390.

Am. & Eng. Ency. of Law, 2nd Ed.,
Vol. 3, page 1081.

It must be assumed that the appellee knew the character of appellant corporation, and the purpose for which it was organized, and his application for insurance was an application to become a member of appellant society upon the terms prescribed in its charter, and in its Constitution and by-laws. He must have expected a policy in the usual form issued by the appellant and must be deemed to have agreed to accept such a policy.

*Van Loan v. Farmer's Mut. Fire
Assoc.*, 90 N. Y., 280.

*De Grove v. Metropolitan Fire Ins.
Co.*, 61 N. Y., 594.

The United States Circuit Court of Appeals in deciding this case in their opinion, in reference to Constitution of 1888, write that:

“Something more (other than its adoption) must be shown to make this constitution a part of the contract. It must appear that it was promulgated and called to the attention of applicants for insurance, at least of such applicants as asked to be shown the ‘laws, rules and regulations,’ which by their application, they were agreeing to be controlled by it.” (Opinion, page 395 of record.)

The insured in this case did not request a copy of the laws, rules and regulations of the society. On the contrary he asked for no information whatever.

A repetition of testimony of plaintiff in court below refutes his claim that he made contract of insurance upon assumption that constitution of 1886 was part of his contract.

It appears he read his application before he signed the same, and when he did sign application he intended to be bound by the rules and by-laws as they then existed (fols. 156-157), and constitution and by-laws of 1886 were not seen by plaintiff in court below before or at the time he signed said application with the intention on his part that the constitution and by-laws then in force should be a part of his contract.

The appellant is insisting that contract between the parties be construed with constitution of 1888 as a part of such contract. The appellee himself states he intended when he made application that such constitution should be a part of his contract. So far there could be no contention of any mistake of the parties as to the writings that were to comprise the contract between them.

The next step is delivery of policy.

The appellee knew that no officer of local lodge had authority to issue policy or pass upon his application. (Fol. 170.)

Plaintiff does not know who gave him Exhibit "C," the Constitution of 1886. (Fols. 135-136.) Witness Fredendall has no recollection of transaction. (Fols. 181, 197.)

There is not a scintilla of evidence that plaintiff in court below asked to see the by-laws and regula-

tions mentioned in his application or that when Constitution of 1886 was delivered to him, any representation was made to him as to fact that Constitution of 1886 was part of his contract or in fact from whom he received Exhibit "C," the Constitution of 1886, and in fact does not himself see Exhibits "C" or "D" of plaintiff in court below until the policy issued upon his application was delivered to him. From facts recited it must be conceded that nothing contained in Constitution of 1886 or Exhibit "D" of plaintiff in any way influenced him to enter into the contract of insurance for he never saw either until he made application for his policy and policy issued upon his application was delivered to him.

The application read and signed by insured specifically states that his contract should be controlled by all the laws, rules and regulations of the order governing his Rank then in force or that might thereafter be enacted. (Pages 59-61, fols. 236-237.) The policy delivered and accepted by him states that one of the considerations thereof is the full compliance upon his part with all the laws then in force governing his rank, then in force, or that might thereafter be enacted. He states, that, when he made application, understood and intended that obedience to the laws then in force should be part of his contract. Upon this state of facts the appellee could not release himself from the obligation to comply with provisions of Constitution of 1888 upon the grounds of a mutual, or any, mistake of fact.

There is no evidence of fraud whatever. The only evidence of appellee to support his contention that appellant is estopped from claiming that laws of 1888 were part of his contract is that when

policy was delivered to him he was given a copy of Constitution of 1886. No representation is made at time it is given to him. There is no evidence on his part as to what action the delivery of Constitution of 1886 to him was caused or influenced thereby. He receives the said Constitution of 1886 after his contract, as he intended it should be, is completed by delivery of policy to him. He knew no agent of local lodge had authority to pass upon his application or issue the policy. No authority of any agent of defendant to alter or amend the contract of insurance prescribed by Constitution of 1888 is shown, or attempted to be shown, and the law prescribes he is bound to know the by-laws of his society, and hence, must be presumed to have knowledge that no agent of appellant could by any act or omission create a contractual obligation of appellant other than the contract provided for in constitution of appellant, then in existence, being Constitution of 1888 and Exhibit "A" of defendant in court below. Such being the case the evidence of appellee failed to establish that any agent of appellant having authority so to do represented to appellee that the Constitution of 1886 was part of his insurance contract or that any representation of any kind was made by any one to appellee as to Constitution of 1886 or that appellee was in any way influenced by the delivery of the Constitution of 1886 to him or by anything therein contained.

The doctrine of estoppel or waiver as it is sometimes called is invariably set forth to overcome or in effect annul the rule of evidence that parol testimony is inadmissible to vary the plain terms of a written contract.

The object of the claim of waiver or estoppel in case at bar was likewise an attempt on the part of

appellee to avoid the operation of the plain written stipulations of his contract and an inspection of record will disclose the reason for strenuous efforts of appellee to have Constitution of 1888 eliminated as a component part of his contract of insurance and the Constitution of 1886 substituted therefor.

The plaintiff in court below prosecuted this action and the trial court decided this action upon the theory that the doctrine laid down in the case of *Wright v. Knights of Maccabees* (196 N. Y., page 391) applied. In that case the Court of Appeals of State of New York held in substance that where the provisions of Constitution of a fraternal society provided that the rate of assessment should *continue* as long as insured was a member, that said rate, *in the absence of a special provision in Constitution or by-laws of such society authorizing an increase of rates*, such rates could not be increased under a general reservation of power in contract of insurance, to amend the by-laws.

The plaintiff in court below, when issue was joined, was apprised by answer of appellant that his contract of insurance had as a component part thereof the Constitution of 1888. He knew at the trial that, even under the restrictive doctrine of the *Wright* case cited above, under his contract of insurance, with Constitution of 1888 considered as a part thereof, he would fail by reason of the fact that his contract so considered authorized an increase of rates and came within the exceptions to strict ruling of *Wright* case by reason of fact that his contract, considering Constitution of 1888 as a part thereof, not only did not state his rate of assessment should continue the same as long as he remained a member but on the contrary stated it was to continue at

stated amount *unless otherwise provided by Supreme Lodge, etc.* (fol. 865), and further Constitution of 1888 did further specifically provide "*and the board is further empowered to re-rate the present tables of the Fourth Class applying it to all members should such action become necessary for the proper protection and perpetuity of the rank.*" (Fol. 898.) This special provision was in addition to general reservation of power to amend by-laws and coupled with further fact that under Constitution of 1888 appellee's rate of assessment was not to remain as stated as long as he continued to be a member of society but was to be at rate specified in the event that Supreme Lodge did not otherwise provide, gave appellant the right to increase its rate of assessment when necessity therefore existed, under the same Wright case relied upon by appellee. The appellee had no intention to and did not contest necessity for increase of rates enacted by appellant. Under these facts appellee could not succeed if Constitution of 1888 was part of his insurance contract. His application and certificate both executed in 1889 provide in writing that laws then in force shall be part of his contract. This of necessity made Constitution of 1888 part of his contract by the plain written provisions of his application and policy. His effort at the time of taking of testimony of appellee was to avoid the plain written provisions of his contract by way of an estoppel. At time his evidence is introduced no proof has been offered by appellant as to Constitution of 1888. It is set forth in answer but evidence of defendant in court below was not taken until after plaintiff in court below had offered his proofs in open court. It is reasonable to suppose that

appellee anticipated the proof of Constitution of 1888. The court will keep in mind that it has never been contended that appellant's Exhibit "A" is not in fact the Constitution and by-laws adopted by appellant in 1888. It was disregarded by trial court upon alleged failure of preliminary proof to warrant its receipt in evidence. At time of taking of evidence of plaintiff in trial court, no attempt was made by said plaintiff to establish that Constitution of 1886 was in force and unrepealed at time certificate of insurance was issued to appellee and was part of his contract. That appellee could not do. His effort was, at that time, to create a situation by the force of which appellant would be estopped from claiming actual Constitution in force was part of contract of insurance and substitute for constitution actually in force a repealed constitution and as a means to such end claims that after he made his application and received a policy for which he applied, he also received copy of Constitution of 1886. He afterwards objects to receipt of Constitution of 1888 in evidence it is true, and makes his objection as to sufficiency of proof of Constitution of 1888, although verified by secretary of Supreme Lodge, and insists on having considered as part of his contract a copy of a constitution without being able to tell from whom he received it. At time appellee offered Constitution of 1886 in evidence, he was seeking to avoid the plain written terms and provisions of his contract of insurance by substituting a constitution not in force for the constitution then in force, it being to the constitution then in force that his application and certificate in writing referred.

As noted above there was no mistake upon part of insured as to fact that Constitution then in force should control his contract.

There was no authority shown on the part of anyone to alter or amend the contract of insurance provided for in Constitution and by-laws of appellant then existing. Appellee was bound to have knowledge of said Constitution and by-laws then in force. He did have knowledge that no officer of local lodge had authority to pass upon his application or execute certificate. No representation was made to him as to Constitution of 1886 and the delivery of such Constitution to him in no way influenced his conduct as far as evidence indicates.

The doctrine of waiver or estoppel as applied to insurance contracts was discussed by this court at length in case of:

*Northern Assurance Co. v. Grand
Building Association*, 183 U. S.,
308.

After a review of many authorities on the question the court writes a summary of its views upon the proposition of law under discussion and in said summary at page 361 of said report state as follows, among other things:

“Contracts in writing, if in unambiguous terms, must be permitted to speak for themselves and cannot by the courts at the instance of one of the parties, be altered or contradicted by parol evidence unless in case of fraud or mutual mistake of facts. That this principle is applicable to cases of insurance contracts as fully as to contracts on other subjects. * * *

" * * * That where the waiver relied on is an act of an agent, it must be shown either that the agent had express authority from the company to make the waiver, or that the company subsequently, with knowledge of the facts, ratified the action of the agent."

No representation having been made by anyone to plaintiff as to the force, operation or effect of Exhibits "C" or "D" of plaintiff, plaintiff having as far as evidence goes been induced to take no action upon the strength of anything contained in said Exhibits "C" and "D" of plaintiff, no authority having been vested in anyone to deliver said Exhibits "C" or "D" to plaintiff as part of his contract, and plaintiff himself having intentionally subscribed to other by-laws than those set forth in Plaintiff's Exhibit "C," the construction of contract with Exhibits "C" and "D" as parts thereof by force of an estoppel against defendant, was under facts of this case, error.

Northern Assurance Co. v. Grandview Building Association, 183 U. S., 308.

N. Y. Life Ins. Co. v. Fletcher, 117 U. S., 519.

Insurance Co. v. Wolff, 95 U. S., 326.

Andrew v. Aetna Life Ins. Co., 85 N. Y., 334.

Moran v. McCarty, 75 N. Y., 25.

People v. Bank of North America, 75 N. Y., 547.

Matter of Sharp, 56 N. Y., 257.

Jewett v. Miller, 10 N. Y., 402.

In the Appellant society the form of the contract of insurance was prescribed by the Supreme Lodge

which in turn was the membership of the society acting through duly appointed delegates. The power to alter or amend the contract or modify the same was vested solely in the Supreme Lodge. The estoppel claimed by appellee, if given effect, would operate to change the contract of insurance as the result of the act of a section secretary.

In discussing this proposition, the court in the case of *Daffron v. Modern Woodmen of America* (176 S. W., 498) write as follows:

"Where the creating body (of a fraternal society), the membership, expressly reserves to itself the making and determination of and construction of the rules relating to the 'substance of the contract' or property right, any act of the officer in regard thereto is void, and not binding on the society."

The doctrine above was again applied in:

Dean v. Dean (Wis.), 156 N. W., 135.

Leonard v. Farmers Mut. Fire Ins.

Co. (Mich.), 158 N. W., 1041.

POINT III.

Under facts disclosed in this case appellant had right to increase its rate of assessment to amount specified in by-laws passed in 1910.

In the case at bar, the whole issue depends upon the legality of a change of rate of assessment enacted by the Supreme Lodge, Knights of Pythias at a session held in 1910. At that session, the rates

of assessment of members of the Endowment Rank were materially increased and the increase if lawful and within the corporate power of appellant affected the contribution or assessment due from the appellee.

It is undisputed that the appellee failed to pay the increased assessment demanded of him as such assessment was fixed and determined by the legislation of the appellant in 1910 and hence assuming that the assessment as fixed by the appellant in 1910, was lawful, the failure of the appellee to pay the same forfeited his rights under the contract. The vital question before the court then resolves itself into a determination of the legality of the by-laws passed by the appellant at the Session of the Supreme Lodge held in 1910.

In discussing the validity of increase of rates by defendant in 1910, the facts of this case compel the appellant to present its argument upon two distinct assumptions. This situation arises from the fact that appellant claims that the by-laws of 1888 being Exhibit "A" of the defendant in the court below is a part of the contract of insurance between the parties, and the plaintiff in the court below contends that the by-laws of 1886 being Plaintiff's Exhibit "C" in the court below is part of the contract.

Since the filing of this appeal, this court has, in the opinion of the appellant, decided the issues in this case adversely to the contention of appellee even assuming that the contract was constituted as claimed by the appellee and that the by-laws of 1886 are a component part thereof.

The case referred to above is the case of *Mims v. Supreme Lodge, Knights of Pythias*, reported at 241 U. S., 574.

In justice to the appellant however, if the contract of insurance as between the parties hereto had, as a component part thereof, Appellant's Exhibit "A" being the by-laws of 1888, the rights of the parties hereto should be adjudged according to that contract, and the appellant submits its argument herein based on the assumption of:

First. That the contract of insurance between the parties hereto consisted of the application, policy and by-laws of 1888, being Defendant's Exhibit "A" in the court below.

Second. That the contract of insurance between the parties hereto consisted of the application, policy and by-laws of 1886, being Plaintiff's Exhibit "C" in the court below.

FIRST.

A discussion of the relative rights of the plaintiff and defendant under the contract would be unsatisfactory without it being distinctly understood as to what the contract between the parties was as to its component parts.

The contract of a fraternal beneficiary society with its members consists of the statutes of the state, under which it is organized, the charter of the association, its own code of laws, the application for membership and the benefit certificate.

Modern Woodmen of America v. Trevis, 117 Fed. Rep. (U. S. App., 8 Cir.), 369.

Gaines v. Supreme Court, etc., 140 Fed., 978.

Raff v. Rundle, 103 U. S., 225.

- Sabin v. Phinney*, 134 N. Y., 423.
Shipman v. Protected Home Circles,
 174 N. Y., 398.
Van Schoonhoven v. Curley, 68 N. Y.,
 187.
Fullencider v. Royal League, 180
 Ill., 621.
Baldwin v. Begley, 180 Ill., 180.
Supreme Lodge v. Knight, 117 Ind.,
 489; 3 L. R. A., 409.
Supreme Lodge v. La Malta, 30
 L. R. A., 838; 95 Tenn., 157.

Under the doctrine as laid down in the foregoing authorities the rights of parties under the contract of insurance in suit are to be determined by a construction of the laws of Congress, incorporating defendant, the constitution and by-laws of defendant in existence in October, 1889, the application made by plaintiff and the certificate issued to plaintiff by defendant upon such application.

There is no dispute as to identity of different elements of contract as set forth in the record of this case excepting as to what by-laws and constitution is to be considered in interpreting the contract, whether those set forth in Plaintiff's Exhibit "C" or those set forth in Defendant's Exhibit "A."

For the reasons set forth in Point I, the defendant contends that the evidence in the case conclusively establishes that the constitution and by-laws set forth in Defendant's Exhibit "A" formed part of the contract.

The plaintiff in his argument in the court below, in his brief, and in the drafting of his complaint,

has relied upon the doctrine as laid down in case of *Wright v. Knights of Maccabees*, 196 N. Y., 391. The trial court also, from a portion of its opinion (fols. 1352-1364), evidently deemed it a controlling authority in case at bar.

In brief, the act complained of in the *Wright* case, was a curtailment of benefits provided for in original certificate and also an increase in rate of assessment.

First it must be borne in mind that defendant at no time sought to reduce benefits provided for in the certificate issued to plaintiff. Its avowed purpose was to increase its rate of assessment to the end that the benefits provided in such certificate should be paid in full. The options offered providing for a less benefit were only to control in the event plaintiff could not or would not pay the increased assessment. The legislation adopted was to insure full and certain discharge of the obligations in the contract of insurance. (Fol. 1129.)

No proof was offered to contradict or discredit the testimony of witness Wolfe, for defendant, recited in the statement of facts hereinbefore set forth, from which it appeared that rates of assessment as established in 1910, were reasonable and necessary, that without such increase, the Insurance Department would not have lasted for over two years and that no lower rate of assessment could safely have been levied if the order expected to meet its obligations in the future in full.

It, therefore, follows that plaintiff is seeking the aid of a court of equity to restrain defendant from exacting from plaintiff a rate of assessment, which is necessary to enable defendant to fulfill and discharge its lawful and binding contract obligations.

Having the object and purpose of increase of rates of assessment in mind and the practical purpose of prayer of complaint before us, let us resume a discussion of the Wright case as to its application to contract of insurance between the parties to this action, assuming Defendant's Exhibit "A," the by-laws adopted in 1888 are part of such contract of insurance.

In discussing the power of defendant in Wright case, to amend its by-laws, under a general power, where the amendment changed benefits, the court say :

" An amendment of by-laws which form part of a contract is an amendment of the contract itself, and when such power is reserved in general terms, the parties do not mean, as the courts hold, that the contract is subject to change in any essential particular, at the election of one in whose favor the reservation is made. It would not be reasonable and hence not within their contemplation, at least in the absence of stipulations clearly specifying the subjects to be affected that one party should have the right to make a radical change in the contract or one that would reduce its pecuniary value to the other." (196 N. Y., page 452.)

The court when using the language above quoted, is speaking of an amendment which changed benefits regularly specified in certificate. There has been no attempt to change benefits provided for in certificate of plaintiff herein. But it clearly appears that the court when using language above quoted had in mind that a specific reservation of power to amend in a specified particular did not fall within the doctrine expressed by the court in the Wright case.

Judge Vann then takes up the question of increase in rate and says:

"I can see no difference in principle between reducing benefits and increasing the amount to be paid for benefits. The plaintiff entered into the contract on the faith of the promise by the association that he should 'pay the same rate thereafter so long as he remained continually in good standing in the order,' which he had the right to assume and defendant knew that he would assume, was a covenant not to increase the rate. The certificate states that 'he was entitled to all the rights, benefits and privileges' provided by the laws of the order which are thus made a part of the certificate. Hence the right to pay the old rate was one of the rights provided for and that he contracted for. It was a vested right, immune from change by amendment, in the absence of a specific reservation of power to amend in that particular."

The facts of case at bar differ radically as far as assessment increase is concerned from Wright case and we come squarely within the exceptions to the doctrine as laid down in Wright case.

In case at bar there is an entirely different situation. We have established by direct evidence that the by-laws contained in Plaintiff's Exhibit "C" were repealed in June, 1888, over a year before plaintiff made application to join the defendant's order.

This being the case the contract between the parties is to be gathered for Plaintiff's Exhibits "A" and "B" that is the application and policy and Defendant's Exhibit "A" being the by-laws in effect at time plaintiff made the application.

The application reads: I hereby agree that I will punctually pay all dues and assessments for which

I may become liable, and that I will be governed and this contract shall be controlled by all the laws rules and regulations of the order governing this rank now in force, or that may hereafter be enacted by the Supreme Lodge, Knights of Pythias of the World, or submit to the penalties therein contained. To all of which I willingly and freely subscribe." (Fol. 336.)

From this statement in application it is positively indicated that the rules and regulations of the order then in force or to be thereafter adopted were to govern and control his contract. Such rules are specifically referred to and the plaintiff is put directly on notice that the rules and by-laws then in force were part of his contract, and he, as already stated, read the application and intended to subscribe to such by-laws. No amount to be paid as an assessment is mentioned in the application.

By reference to the by-laws then in existence as set forth in Defendant's Exhibit "A" we find numerous provisions as to the Fourth Class of the Endowment Rank, but as the issue raised is simply as to the right of defendant to increase the rate of assessment it is only necessary to direct the attention of the court to such provisions as relate to the rates of assessment and the power to change the same.

Section 1, of Article IV is the provision of the by-laws which provided the amount of assessment plaintiff had to pay and was the only portion of his contract wherein the rate of assessment is set forth. It consists of a printed portion and a schedule of figures, the written portion, reading as follows:

“ARTICLE IV.

“MONTHLY ASSESSMENTS AND FORFEITURE OF CERTIFICATE AND ENDOWMENT.

“Section 1. Each member of the Endowment Rank shall on presenting himself for obligation, pay to the secretary of the section, in accordance with his age and the amount of endowment applied for, a monthly assessment, as provided in the following table and shall continue to pay the same amount each month, thereafter as long as he remains a member of the Endowment Rank; UNLESS OTHERWISE PROVIDED FOR BY THE SUPREME LODGE, KNIGHTS OF PYTHIAS OF THE WORLD.” (Fol. 865.)

This section, which was part of the contract apprised the plaintiff that his rate was not to be the same in any event; on the contrary, it gave him knowledge that the rate was to be paid unless otherwise provided by the Supreme Lodge. He was put on notice at once that the Supreme Lodge had power to provide for another and different rate. Here was a stipulation reserving right to change rate appearing in the portion of his contract which determined his rate of assessment. This by-law gave notice that there was no covenant on the part of defendant with plaintiff that he would only be required to pay same rate thereafter.

In fact it told him as plainly as written language could indicate that there was not a covenant that the rate would be the same in the future. It was an express declaration that rate in schedule should only apply until such time as defendant might otherwise provide.

It absolutely contradicted a presumption that the rate as set forth in the schedule attached would

not be increased or altered and the plaintiff had no right to assume that his rate would not be increased and the defendant by the plain written language of the contract informed plaintiff his rate was subjected to the further provisions of the order. The court will notice that at the outset, the contract as far as rates were concerned, did not specify that plaintiff was to continue the same rate thereafter, but on the contrary informed plaintiff that he rate he was to pay was to continue UNLESS otherwise provided for by the defendant, their being a notice to him in fact that his rate was not fixed and determined but was, if the defendant deemed it necessary, subject to future revision.

But there was another provision of the by-laws which had to do with the rate to be paid by defendant and which was part of the contract between plaintiff and defendant.

Section 17, Article VIII, of the by-laws in force at time plaintiff made his application, reads as follows: * * * AND THE BOARD IS FURTHER EMPOWERED TO RE-RATE THE PRESENT TABLES OF THE FOURTH CLASS APPLYING IT TO ALL MEMBERS SHOULD SUCH ACTION BECOME NECESSARY FOR THE PROPER PROTECTION AND PERPETUITY OF THE RANK. (Fol. 898.)

Here we have an express reservation and stipulation reserving to defendant the right to re-rate the members of the Fourth Class of which plaintiff was a member, appearing in the by-laws forming a part of the contract between plaintiff and defendant and in full force and effect at time plaintiff joined the order.

When the provision in the by-law which fixes schedules of rates, reading that the rates were to continue unless otherwise provided, is read in connection with the provision giving the order the right to re-rate members of Fourth Class when deemed necessary, a clear and unequivocal express reservation was made in contract between plaintiff and defendant to provide for change of rate of assessment and there was no necessity to invoke the provision of contract wherein plaintiff agreed to abide by future by-laws.

By reference to the third written document, the certificate, forming part of contract, it will be seen that the part thereof referring to payment of assessments reads: " * * * The payment of the prescribed admission fee, and in consideration of the payment hereafter to said Endowment Rank of all assessments as required. * * *." (Fol. 269.)

The policy does not say what rate of assessment shall be, but states that payment is to be made as required. Required by what? Is it not the inevitable conclusion that it was the assessments as should be required by the by-laws to which he subscribed? Especially when reading the following additional words in policy: "And the full compliance with all the laws governing this Rank now in force or that may hereafter be enacted." (Fol. 269.) The facts disclosed in the contract between the parties hereto bearing on issues in the action are in substance as follows:

The plaintiff agreed to comply with all by-laws in force or to be thereafter enacted.

The by-laws at the time plaintiff made his application in fixing the rate he was to pay, stated that the rate was to be as stated in said by-law, unless otherwise provided.

The by-laws at the time plaintiff made his application also contained a specific provision authorizing the defendant to re-rate the policy of plaintiff when necessary for protection and perpetuity of the class of the order to which plaintiff belonged.

The policy of plaintiff contained a provision that plaintiff was to pay all assessments as required by the by-laws of defendant.

The defendant re-rated the policy of plaintiff and assessed against the same a rate of \$14.70 a month, which was an increase, the plaintiff at time action was commenced paying \$4.80 a month.

The defendant adopted a by-law in 1901, increasing the rate of assessment from \$3.00 a month to \$4.80 a month on policy of plaintiff, which increased rate plaintiff paid down to January 1, 1911, without objection and has tendered same amount, that is, \$4.80 a month, ever since.

The defendant offers uncontradicted evidence that at time it changed rate of assessment from \$4.80 to \$14.70 a month, such increase was necessary for proper protection and perpetuity of class to which plaintiff belonged and that such increase was reasonable and that no less an amount of assessment than \$14.70 could be received if the policies of members of Fourth Class were to be paid in full.

That defendant did not intend or contemplate any change in form of policy issued to plaintiff or in the benefits secured thereby if plaintiff paid the assessment of \$14.70 a month.

From the above resume it is clearly established that defendant's contract is clearly within the exceptions to doctrine laid down in Wright case.

And it was by reason of the fact that, under plaintiff's contract of insurance, considering Defendant's Exhibit "A," the by-laws of 1888, a part thereof, plaintiff was not entitled to the relief sought even under the doctrine of the Wright case, that plaintiff strove so zealously to have by-laws of 1886, his Exhibit "C," construed as part of the contract; first, through the medium of an alleged estoppel and, secondly, by the interposition of an objection to receipt of Defendant's Exhibit "A" in evidence at a time when defendant would have been precluded from offering further proof, if objection was sustained.

SECOND.

Assuming that Plaintiff's Exhibit "C" being the by-laws of 1886, was a part of the insurance contract, under the facts of this case, the increase of rate of assessment in 1910 was within the scope of the power reserved to appellant in the contract of insurance. Before entering into a discussion as to the right of the appellant to increase the assessment of appellee, assuming the contract of insurance to be such as is claimed by appellee, appellant deems it pertinent again to recite the admitted facts in this case bearing on the question of the validity of the increase of rates.

Upon an examination of the documentary proof and turning to the application, we find this agreement: "I hereby agree that I will punctually pay all dues and assessments for which I may become liable and that I will be governed and this contract shall be controlled by all the by-laws, rules and regulations of the order governing this Rank now in force, or that may hereafter be enacted by

the Supreme Lodge, Knights of Pythias of the World or submit to the penalties therein contained. To all of which I willingly and freely subscribe." (Fols. 236-237.)

The policy of insurance is set out in full at page 67 of the record and contains the following as to the consideration therefor. "In consideration of the representations and declarations made in his application bearing date October 26th, 1889, which application is made part of this contract, and the payment of the prescribed admission fee and in consideration of the payment hereafter to said Endowment Rank, of all assessments *as required*, and the full compliance with all the laws governing this Rank, now in force, or that hereafter may be enacted, and shall be in good standing under said laws." * * * The other written portion of the contract is Exhibit "C" of plaintiff in the court below. The exhibit is entitled "Constitution and General Laws of the Endowment Rank, Knights of Pythias of the World." (Page 70.) Its very title clearly indicates that the statutes therein contained appertain solely to the insurance branch of appellant and were not general statutes having to do with the insurance regulation of the Knights of Pythias as a fraternal society. They were the specific statutes relating to insurance certificates issued by the appellant. The assessments provided by such Constitution were set forth in Article 4 (page 78) and said article reads as follows:

"Section 1. Each member of the Endowment Rank shall on presenting himself for obligation, pay to the secretary of the section, in accordance with his age and the amount of endowment applied for, a monthly assessment, as provided for in the following table, and shall

continue to pay the same amount each month thereafter as long as he remains a member of the Endowment Rank."

The Exhibit "C" was divided into two parts as hereinbefore noted, one part consisted of eleven articles comprising the constitution and another portion of twelve articles being styled "The General Laws" and the exhibit itself recites that it is the constitution and general laws governing the Endowment Rank. Among the powers reserved to the Supreme Lodge in said exhibit appears the following provision of Section 6 of Article 1: "*Section 6. To create, hold and disburse the funds of the Endowment Rank under such regulations as it (The Supreme Lodge) may deem necessary.*" (Fol. 281.) The following also appears in Section 5 of Article 5 as defining the powers of the Supreme Lodge. Section 5. "The power to adopt any additional forms, alter or amend any of the laws or the business details connected with the Endowment is vested in the Supreme Lodge exclusively and it shall be the duty of that body to preserve uniformity in the workings of the Rank in detail and to require on the part of all Sections, a strict conformity therewith." (Fol. 326.)

A power to call extra assessments was provided for in Sections 1 and 3 of Article 6. (Fols. 327-332.) The last Article of that part of Exhibit "C" which was termed The Constitution, reads as follows:

"ARTICLE XI.

AMENDMENTS.

"These laws may be altered or amended at any regular session of the Supreme Lodge, Knights of

Pythias of the World by a two-thirds vote." (Fol. 354.) Following the Constitution came the twelve General Laws or twelve articles referring to the Internal Regulation of the Endowment Rank and Article 12 of the General Laws read as follows:

"The provisions of these general laws may be altered or amended at any regular session of the Supreme Lodge, Knights of Pythias of the World by a two-thirds vote." (Fol. 397.) The original certificate of incorporation filed in 1870, provided among other powers, the following: 'It (appellant) shall have the power to amend its Constitution and By-Laws at will.' (Fol. 610.) In the special act of Congress of 1894 incorporating Appellant, it is provided that appellant 'shall have a constitution and shall have power to amend the same at pleasure.' It is stated in the Laws of the District of Columbia where the powers of Supreme governing bodies of fraternal societies are given 'the right to adopt a system of by-laws and amend the same at pleasure.'

The right to amend the laws governing appellant as a fraternal society is found in its corporate charter and is also found in the Constitution and by-laws which were compiled in a pamphlet form as being the Constitution and by-laws referring specifically to the Insurance Department of appellant and the right to amend as clearly as language could indicate referred entirely to the Constitution and by-laws governing the Insurance Contract among which such by-laws and Constitution was one enacted by the Supreme Lodge providing for rates of assessment in conformity with the authority given to the Supreme Lodge to create the funds of the Endowment Rank. This law

which was enacted to create the funds was one of the laws embraced within the pamphlet wherein it was provided that those same laws could be amended. The appellant herein is purely a benevolent and fraternal society, and does not engage in business for gain or profit at any time. (Pages 96-97.) The history of the appellant shows that it was started in 1877, and the members were divided into two classes. A third class was formed in 1884, limited to members whose ages ranged from fifty to sixty years and the amount of insurance issued to any member of said class did not exceed one thousand dollars. (Fols. 640-642.) The assessments at first were one dollar a month for each thousand dollars of insurance, but extra assessments could be called. (Fol. 643.) What was termed the fourth class was created in 1884, and most of the three classes mentioned above transferred to the fourth class and what was known as the Assessment Plan was changed to what was termed The Ante Mortem Plan. (Fols. 644-645.) In March, 1894, dues were increased five cents per thousand. (Fol. 647.) In 1901 the dues were again adjusted upon the basis of the National Fraternal Congress table, but no provision was made for expenses and on this re-rating in 1901 the members were re-rated at their age of entry instead of their attained ages. Experience demonstrated that the actual mortality rate had been in excess of that used in making up the National Fraternal Congress Table. A fifth class was formed in 1907, and the rates again increased and into this fifth class all members of the then existing fourth class were invited, and it was provided that they could enter this fifth class independent of their age and without medical examination, but would be assessed

as to their attained age. The by-laws were again changed in 1910, and this legislation of 1910 as far as increase of rates was concerned applied to the members remaining in the fourth class, among whom was appellee. The changes in assessment became operative January 1st, 1911. (Fols. 696-8.) When the fifth class was created in 1907, there was on hand a mortuary fund of \$1,345,259.35. This sum was left to the credit of the fourth class after the creation of the fifth class. (Fol. 654.) The by-laws enacted in 1910 complained of by the appellee were set forth in Exhibit "B" of defendant in the court below (fol. 699), the pertinent parts thereof being sections 468, 390, 401, 464, 479, 490, 491 and 500 of the General Statutes and by-laws of appellant set out in full as Defendant's Exhibit "C." (Page 242.) It appears that the avowed purpose of these by-laws enacted in 1910 was to secure the payment in full of every certificate held by a member of the fourth class among whom was appellee. (Fol. 1129.)

It is also established as hereinbefore noted in the facts by the testimony of the witness Wolfe that the rates established by appellant in 1910 were the lowest rates that could be established if the appellant hoped to remain solvent, and in addition to that it appears from the testimony of Wolf that the necessity of increase of rates was immediate. It is also noted in the facts that the appellee paid all prior increases in the rate of his assessment without question and has never paid the actual cost of insurance protection as such cost is determined and was determined by the actuary, witness Wolf, and again the attention of the court is called to fact that the action of the appellant society in 1910 was the increase of rates only; no

benefits provided for in certificates issued by appellant were in any way curtailed. The options mentioned were only to have effect in the event that a policy holder declined to pay the increased assessment provided for in the legislation of 1910. Applying the facts of this case to the parties hereto, the situation is in substance as follows:

The defendant and plaintiff had entered into a contract consisting of act of incorporation of defendant, the statutes defining its corporate powers, charter, by-laws, application for insurance and certificate. These with the conceded or uncontradicted facts in the case disclose the following:

The defendant is a fraternal society organized under an act of Congress of 1894 wherein there is distinct provision authorizing it to amend its by-laws. The defendant lawfully institutes in the exercise of its corporate powers an insurance branch and provides a Constitution and set of laws for the due government of its insurance department. These laws so provided did enact that the Supreme Lodge of defendant was empowered to create the funds of said Endowment Rank. (Fols. 281-835.) And there were also laws contained in said Constitution that fixed rate of assessment upon members of insurance branch, which said method of assessments was the method adopted by the Supreme Lodge in creating the funds of the Insurance Branch of defendant. A power to alter and amend the Constitution and general laws applicable to Endowment Rank was reserved to defendant, in three several places. The words granting power to alter or amend, were "These laws may be amended, etc.," and the "these" laws were entitled the laws governing the insurance rank of defend-

ant, being separate and distinct from general Constitution of defendant as a fraternal body. (Fols. 277, 279, 326, 354, 397, 831, 832, 892, 925, 960.) The by-law specifying rate of assessment was one of the articles of "these" laws that could be amended by a similar article which provided for the power to amend. The plaintiff applied for a certificate of membership in insurance department of defendant and in his application agreed to punctually pay all dues for which he became liable and that he would be governed and his contract controlled by *all* the laws, rules and regulations of the order governing his rank, then in force or that might thereafter be enacted by the Supreme Lodge and plaintiff upon such application received a certificate which provided that the benefits specified in said certificate were to accrue in consideration of the payment of the prescribed admission fee and in consideration of the payment thereafter by defendant to the Endowment Rank of all assessments as required and the full compliance upon the part of plaintiff with all the laws governing rank of which plaintiff was a member or that might thereafter be enacted. (Fols. 268-269.) When plaintiff made his said application and received his said certificate, the liability for dues, and assessments and the requirements as to assessments were found only in the same by laws that contained repealed provisions that those same by-laws could be amended. The defendant did thereafter amend those same by-laws. It acted pursuant to its power to create the fund clearly reserved to it in the by-laws. The only method of creating funds was by means of assessments. It amended the by-laws, found among the laws which were mentioned as subject to amendment, under

distinct provisions of those same laws, which had to do with the fixing of rates of assessment upon members, including plaintiff, by increasing said rates of assessment. Said increase was to create a fund which would enable defendant to pay and discharge its obligations in full and the increase provided was the lowest rate of assessment that could safely be adopted if defendant desired to pay and discharge said obligations in full. The observance of said by-law would have enabled defendant to carry out its contracts. It was established by virtue of a by-law existing and in force at time plaintiff made his application and signed his certificate. It was made a part of contract to which plaintiff had to look to ascertain for what dues he was liable, he agreeing to punctually pay all dues for which he became liable in his application and payment of said increased rate of assessment was asked of plaintiff in view of fact that he accepted a certificate specifying that he would pay all assessments as required, and his contract was to be controlled by all laws in force or thereafter enacted, it being the fact that the laws in force at time he obtained his certificate provided that the provisions of same could be altered and amended, that those laws specified as to the required assessments and as thereafter enacted, those laws required the payment of such increased assessment. The plaintiff refuses to pay increased assessment. He insists that, though in his application he agreed punctually to pay all dues and assessments for which he became liable and that he would be governed and his contract controlled by all the laws, rules and regulations of the order then in force, and thereafter enacted, it shall only be the laws that were in

force at the time shall govern and control his contract and further states that it is only a particular portion of laws then in force that shall control, viz.: the laws fixing his assessments; the law that fixed his assessments now he claims has no force.

Though he accepted a certificate stating benefits provided therein were in consideration of his compliance with all laws governing his rank or that might be enacted he now asserts that he is only required to comply with the laws then in force. Plaintiff is in court invoking the aid of an equitable remedy to restrain defendant from the carrying out of a by-law duly passed in the course of internal management of defendant corporation, for a legitimate lawful corporation purpose, having for its aim the faithful discharge of its due and binding corporate obligation; the object of by-law being to create funds for Endowment Rank, the power to create the fund being especially vested in defendant and the amount to be realized if said by-law is observed being only sufficient to insure the discharge of all contracts of insurance of defendant in full. At same time the plaintiff, as the only basis of his right to such relief is asserting that the clear unequivocal and plain terms of a written contract which bind and obligate him to an observance of this same by-law are null and void.

The defendant claims that the weight of authority is clearly and emphatically against the contention of plaintiff.

The contract between the parties is to be construed in the light of the situation of the parties and their subsequent action in regard to said contract. The language of a contract is assumed to have been employed with a view of wishes of parties

with respect to result to be obtained by contract. The defendant issued insurance contracts. The plaintiff desired such a contract. The presumption against fraud which the law raises would warrant the inference that defendant would not issue a contract of insurance when it knew that its means were inadequate to fulfill such a contract in future and common sense would dictate that plaintiff would not accept a contract if he did not believe the defendant was authorized and empowered to enforce all lawful means and to secure by proper enactment funds sufficient to enable it to keep faith in its contracts. The language employed in a contract has always some purpose, clearly expressed provisions of a written contract cannot be deemed surplusage, but are to be construed as intending their plain meaning and especially is this so when the clearly expressed meaning enables and insures the full and complete performance of the contract.

The power invoked by defendant was to carry out its lawful contracts.

The facts of case demonstrate that course pursued and rate adopted was necessary and only sufficient to attain the end desired.

It accomplished this and through an amendment of its by-laws. The right to amend its by-laws was and the liability of obedience to after-enacted by-laws was clearly defined and specified in contract with plaintiff.

As a general proposition in light of authorities, as to how contract shall be construed, it would seem that plaintiff has no cause of action.

"Contracts of insurance are to be interpreted like other contracts."

Jock v. Home Mutual Insurance Co.,
111 Cal., 503; 34 L. R. A., 857.

"The first and main rule of construction is that the intent of the parties, as expressed in the words they use shall govern."

Kennedy v. Porter, 109 N. Y., 526.

Smith v. Kerr, 108 N. Y., 31, page 37;
9 Cyc., page 577.

"In construing a contract it is to be so construed that every word of it will, if possible, be given effect and a construction which would nullify or render meaningless any part of the contract is to be avoided."

Hill v. Loudon, 33 Ill. App., 196, 199.

Heywood v. Perrin, 27 Mass., 228,
230.

Sattler v. Hallock, 160 N. Y., 291.

"Parties will not be presumed to have used language idly but the presumption is they used it for a purpose."

Dwight v. German Life Ins. Co., 103
N. Y., 341, 352.

Miller v. National Council, 69 Kan-
sas, 231.

The plaintiff is presumed to have knowledge of the nature of defendant corporation, its system in providing funds, its demands upon such funds, as to how said demands are created, and its contract obligations as to insurance for they are all within the scope of the provisions of Constitution and by-laws. He is a member of defendant order. That defendant should meet its obligations is self evident. The present means at hand render such an

event impossible. An increased assessment would enable contracts to be carried out to the letter. Such an increase could only be brought about by an amendment of the by-laws. A provision authorizing an amendment to by-laws is found three times in the by-laws. The by-laws fix assessments. The contract, or rather application and certificate, both provide that by-laws in force and after-enacted by-laws shall be observed by plaintiff. Upon authority of cases above cited, it would seem plaintiff was bound by after-enacted by-law increasing his assessment, as to hold otherwise would practically decide that provisions in by-laws as to powers to amend same and stipulations in certificate and application as to contract being controlled by laws in force or those thereafter enacted were used idly without a purpose and thus nullify and render of no avail a plain provision in the contract which was in this case sought to be enforced to maintain the integrity of the defendant corporation.

But there is abundant authority to justify acts of defendant complained of in this case.

In the first place it is well to bear in mind that the real wrongful act which plaintiff seeks to restrain is enforcement of by-laws which increased rates of assessment of plaintiff. No benefits were reduced by defendant. The reduced benefits followed only in the event plaintiff failed to pay increased rate of assessment and the options so offered were really in the nature of concessions to those members of the order who failed to pay the increased assessment.

Whatever rights defendant has under its charter were created by the laws of Congress. Its corpo-

rate authority is questioned and the issue presented herein is a question of Federal jurisprudence.

Sec. 237, Judicial Code.

Elmendorf v. Taylor, 10 Wheaton,
289.

Supreme Lodge v. Kalinsky, 163 U. S.,
288.

Supreme Lodge v. Withers, 177 U. S.,
260.

*Calhous Mining Co. v. Ajax Mining
Co.*, 182 U. S., 497.

Supreme Lodge v. Hill, 76 Fed., 468.

Supreme Lodge v. England, 94 Fed.,
369.

As to the right of defendant generally to make amendments to its laws, under its inherent powers, the defendant can do all the New York Court of Appeals holds is the limit of its corporate power under a reservation in the contract as to after-enacted by-laws.

Thompson on Corporations, 1st Ed.,
Vol. 1, Sec. 955.

Niblack, Benefit Societies, Sec. 16,
Page 114.

Supreme Lodge v. Knight, 117 Ind.,
489; 3. L. R. A., 409.

RESERVED RIGHT TO AMEND LAWS.

Before discussing question of right to amend the by-law, defendant wishes to call attention of court to fact that the financial conditions of defendant which prompted it to take action in 1910, in in-

creasing rates of assessment, was disclosed by testimony of witnesses Powers and Wolfe. No evidence was offered to contradict them or impeach them. This being so as the case now stands it must be assumed that without the rates being increased in 1910, the fourth class would become insolvent in two years; that the rates were increased to avoid insolvency and to enable defendant to discharge its fraternal contract obligations, and that the amount of rate of assessment as established in 1910 was the lowest amount which could be safely assessed if defendant intended to pay every contract upon its maturity as a death claim.

The trial court states in its opinion that it regards the rates adopted in 1910 unnecessary and unreasonable (fols. 1399-1400), but in referring to said portion of opinion where such statement is made by trial court it will be seen that the fact that such increase was needed to prevent insolvency of defendant, and was no more of an increase than was necessary for that purpose was not considered by the court. It is the necessity for the increase and amount of increase adopted as to its ability to overcome the necessity of the increase that is to control in adjudging as to whether increase was reasonable and necessary.

This principle is decided in the cases hereinafter discussed wherein the right to adopt a by-law providing for an increased rate of assessment is upheld.

A provision in the contract of a fraternal beneficiary society that the holder takes it subject to the laws then in force, or that may thereafter be adopted, certainly adds something to the power of the society with respect to the right to amend and repeal by-laws.

The right of a fraternal beneficiary society to readjust and increase its rates under a reserved right to amend in the contract (using that term in the broad sense in which it has already been defined) is recognized by the overwhelming weight of authority.

Fullenwider v. Royal League, 180 Ill., 521; 54 N. E., 485; 73 Ills. App., 321; 72 Am. St. Rep., 239, and note 244; 31 L. R. A., N. S.

Wineland v. Knights of the Maccabees, 148 Mich., 608.

Reynolds v. Supreme Council, 78 N. E., 189; 7 L. R. A. (N. S.), 1154; 192 Mass., 150, and numerous authorities there cited and particularly Editor's note and note 31 L. R. A. (N. S.), 417, 418.

7 *Am. & Eng. Anno. Cases*, 776, and note, page 780.

Gaines v. Supreme Council Royal Arcanum, 140 Fed., 978.

Miller v. National Council Knights of Ladies of Security, 76 Pac., 830; 69 Kansas, 234.

Messer v. Ancient Order United Workmen, 180 Mass., 321; 62 N. E., 252.

Supreme Lodge v. Knight, 117 Ind., 489; 3 L. R. A., 409.

Williams v. Supreme Council, etc., 152 Mich., 1.

Barbet v. Mutual Reserve Fund Life Assn., 100 Ga., 681.

Haydel v. Mutual Reserve Fund Life Assn., 98 Fed., 2.

- Haydel v. Mutual Reserve Fund Life Assn.*, 104 Fed., 718.
- Barrows v. Mutual Reserve Fund Life Assn.*, 151 Fed., 461.
- Mutual Reserve Fund Life Assn. v. Taylor*, 99 Va., 208.
- Pierce v. Bankers' Union* (Ill. App.), 46 Nat'l Corp. Rep., 328.
- Conner v. Golden Cross*, 117 Tenn., 549.
- Woodmen of the World v. Woods*, 34 Colo., 1.
- Gilmore v. Knights of Columbus*, 77 Conn., 58; 58 Atl., 223; 107 Am. St. Rep., 17; 1 Am. & Eng. Anno. Cases, 715; and cases cited in note, pages 717-718.
- Richmond v. Supreme Lodge, Order of Mutual Protection*, 100 Mo. App., 8.
- Champion v. Hannahan*, 138 Ill. App., 387.
- Bacon Benefit Societies*, Secs. 185, 188.
- Kane v. Knights of Columbus*, 79 Atl., 63 (Conn.), at page 67.
- Sheppard v. Bankers' Union of the World*, 77 Neb., 85; 108 N. W., 188.
- Fughe v. Society of St. Joseph*, 46 Vt., 349.
- Chambers v. Supreme Tent.*, 200 Pa. St., 244; 49 Atl., 784.
- See Lloyd v. Sup. L. K. of P.*, 98 Fed., 66 (this Circuit Court of Appeals case not a rate case).

Supreme Ruling Mystic Circle v. Ericson, 131 S. W., 92.

Norton v. Catholic Order of Foresters, 138 Iowa, 464; 114 N. W., 893; 24 L. R. A. (N. S.), 1030, and note.

Elliott v. Home Mutual Hall Assn., 140 N. W. (Ia.), 431.

Supreme Lodge v. Beiler, 105 N. E., 244.

Before discussing the cases above cited it may be well to state the principles upon which the right to increase the rates of contributions of members under benefit certificates containing a reserve power to amend has been affirmed, while frequently the same courts have denied the power of the society arbitrarily to reduce the certificate or to enact subsequent so-called suicide clauses, etc., etc.

First. Because the right to charge adequate rates affects the very life of the corporation itself and in construing the reserved power to amend it will not be given such an interpretation as will prevent the company from maturing its contracts. This is the rule of necessity.

Second. Even though a table of rates is fixed in the by-laws it will be assumed, although the language strongly tends to show that it was the intention of the society to maintain the same rate, that where this was an inadequate rate, the member agreed that the rate stated in the by-laws should

be controlled by the expressly stipulated reservation to amend.

Third. The members could not have contemplated that the society would have made any agreement which would deprive it of its right to mature its policies. This is probably only another way of stating the second proposition above.

Fourth. Such an amendment is reasonable and that amendments to reduce the amount of the certificate or enact a suicide clause, etc., etc., are unreasonable.

Fifth. The change of rates is a matter of internal regulation and control which will not be interfered with by the courts.

Sixth. The right to the face of the certificate is a vested right, while the right to pay a given rate is not a vested right, or not, at least, an unqualified vested right, and, therefore, may be amended.

Seventh. These societies being mutual fraternal beneficiary societies, and the members therefore occupying the dual relation of insurer and insured, they must have contracted with reference to this situation.

The cases in which the right to increase rates under a reserved power to amend, has been upheld do not rest upon any one of the above principles. As a rule they are based upon several of the reasons above stated. The rule of necessity, taken in conjunction with the fact that these societies are mutual in their character, each member occupying the dual relation of insurer and insured, furnishes

the best and most satisfactory basis for the decisions. Opposed to the long line of authorities which we have cited is the leading case of *Wright v. The Maccabees of the World* (95 N. E., 1142), affirmed on the opinion in the same case reported in 196 N. Y., 391; 89 N. E., 1078; 31 L. R. A. (N. S.), 423.

We call the court's attention to a note to the case of *Michael Dowdall v. The Supreme Council, etc.*, 31 L. R. A. (N. S.), 417, where the effect of this and other New York decisions are considered.

It is to be noted that the United States Circuit Court of Appeals for the second circuit and for the eighth circuit have expressed opposite views as to the law to be applied to the main question in issue in this case.

The court below in its opinion deciding this case quoted with approval the doctrine expressed in *Ayres v. Ancient Order of Workmen*, 188 N. Y., 280. (Page 396 of Record.)

The Circuit Court of Appeals of the eighth circuit in the case of *Supreme Lodge of Fraternal Union of America v. Light*, 195 Fed., 903, decided March 14, 1912, in speaking of the Ayres case and other cases holding similar views, says:

"But they are not in harmony with prevailing authority as we shall presently demonstrate and do not commend themselves to our favorable consideration."

"An agreement by the holder of a benefit certificate to observe and abide by amendments binds him not only to subsequently enacted disciplinary regulations of the order, but also to subsequently

enacted changes affecting the contract or benefit certificate."

The Order of United Commercial Travelers v. Smith, 192 Fed., 102-104, Per Baker, J.

We will consider briefly a few of the cases holding that a reserved right to amend authorizes the society to increase rates.

Kane v. Knights of Columbus (Conn.), 79 Atl., page 63.

This was an action by plaintiff and others for an accounting and distribution of certain funds in the possession of the defendant corporation. Kane became a member of the society in 1885, and his application for membership recited:

"I will conform to and abide by the Constitution and rules of this council and of the order, which are now in force, or may hereafter be adopted by the proper authority."

The certificate of membership provided that its issue should not exempt the holder from any duty or obligation arising out of present or future laws of the order. From the date of its existence in 1886, the society was on the assessment plan. In 1886 and 1901, the method of assessment was changed and rates were based on age. In 1892, an additional sum was required to be paid for each \$1,000 of death benefits carried and these funds were deposited in a mortuary reserve fund. On January 1, 1902, under a law passed in 1901, a so-called step-rate plan became operative. This plan was based upon the age of the members divided in classes for five years' mortuary expenses. Upon

May 30, 1903, Kane received and retained a new death benefit certificate but did not surrender his original certificate.

The Supreme Court of Connecticut in deciding this case, said:

"The charter expressly gave the order the right to 'make and execute necessary by-laws for the management of said order and its property,' it was granted subject to amendment and an amendment in 1889, re-enacted in subsequent amendments, gave it power to alter and repeal said Constitution, by-laws, rules and regulations. The applicant for membership agreed to conform to and abide by the Constitution and rules of the council and of the corporation which are now in force, or which may be hereafter adopted by the proper authority. The membership certificate recited that it was issued subject to his compliance with present future laws.

"The power of amendment thus received gave the order the right to change its laws so long as these were not contrary to law or unreasonable. And the terms of the contract of insurance with its members made such changes a part thereof.

Gilmore v. Knights of Columbus, 77 Conn., 58, 61; 58 Atl., 223; 107 Am. St. Rep., 17; Am. & Eng. Anno.; cases 715 and note, pages 717, 718.

Reynolds v. Royal Arcanum, 192 Mass., 150; 78 N. E., 129; 7 L. R. A. (N. S.), 1154.

"The promise of the member is to abide by all by-laws then existing or thereafter adopted which carry out the purposes of the order or help fulfill its obligations arising through its

contracts of insurance. Its reserved power gave it no right to divest, impair or disturb rights once vested in its members, for such a by-law would be unreasonable."

Reynolds v. Supreme Council, 192 Mass., 150; 78 N. E., 129.

This was an action to set aside certain changes in the defendant's by-laws. Until 1898, the society was upon an assessment plan. In that year the by-laws were amended so as to largely increase the payments and to require them to be made monthly. These payments were in the same relative proportion and were met without objection. In 1904, the payment exceeded the receipts and there was a deficit of \$270,000. To remedy this the Supreme Council in 1905 employed experts who devised a new plan which would yield a sufficient revenue to mature the certificates. The plaintiff expressly agreed:

"I conform to and abide by the Constitution, rules and usages of said council and all laws, rules and regulations in force or which may hereafter be adopted by the same," and his certificates promised payment only on condition that he complied "with the laws, rules and regulations now governing the said council and fund, or that may be hereafter exacted by the Supreme Council to govern the said council and fund."

The court in discussing the power of the society to increase the rates, said:

"There are many cases in which it is held that the amount expressly promised to be paid in a certificate like those issued by the defendant cannot be cut down by an amendment of the by-laws

(authorities here cited). But in many of these, as in the case from this court last cited, a distinction is made between the express stipulation of the corporation to pay a certain sum and other provisions relating to the methods of the corporation, and the duties of the certificate holder which properly may be a subject for regulation of by-laws, even though they affect the rights of the parties under their contract. The assessments to be paid for death benefits in this case are provided for by the by-laws, while the promise in writing to pay a certain sum to a particular person is, as to that person, a matter outside of those corporate rules which may be expected to be changed by an amendment of the by-laws. This promise on one side is set over against the promise of the member on the other. The promise of the member is to do what may be called for by the by-laws then existing or that may afterwards be adopted. The promise of the corporation is stated expressly without mention of the by-laws. The member occupies a dual position, as an insurer and the insured. As one of the association agreeing to provide for the payments that may become due to members, he agrees to be subject to the by-laws. As the insured person to whom a particular sum of money is promised, he has a right to stand on the terms of the promise.

“That the duties of members prescribed by the by-laws remain subject to modification when a power of amendment is reserved has often been decided. (Authorities here cited.) Most of the cases relied on by the plaintiffs, when rightly analyzed, turn on the distinction between an attempted amendment of the by-laws directly affecting the promise to the certificate holder as an insured per-

son, and an amendment affecting his duties as a member of the corporation bound to perform his part in providing means or otherwise as one of the association of insurers. (Authorities here cited.) On principle and on the weight of authority we are of opinion that there is nothing in this contract that prevents the corporation from amending its by-laws in a reasonable way, to accomplish the purposes for which it was organized, even though the change increases the payments to be made by certificate holders. Such changes necessarily involve some hardship to certain individual members, but the corporation under the law, should do that which will bring the greatest number. The members who complain of its action are those who have had the benefit of insurance for themselves and their families for many years, at very much less than the cost of their insurance to the corporation. They have had the good fortune to survive, and therefore their contracts have brought them no money, but all the time they have had the stipulated security against the risk of death. If now they are called upon to pay for future insurance no more than its cost to the corporation they ought not to think it unjust."

Wineland v. Knights of Maccabees,
148 Mich., 608; 112 N. W., 696.

"This was an action to enjoin the assessment of increased rates. The plaintiff's certificate provided for the payment to a designated beneficiary provided the insured 'shall have in every particular complied with the law, rules and regulations of the order governing members and their beneficiaries, which are now in force, or that may hereafter be adopted by the Supreme Tent, or the subordinate tent to which he belongs.'

"In July, 1893, a provision was made for monthly assessments and for paying the same rate of assessment 'THEREAFTER SO LONG AS HE REMAINS CONTINUALLY IN GOOD STANDING IN THE ORDER.'"

"In 1901 the rate of assessment to be paid by complainant was fixed at \$1.40 a thousand, and in 1904, upon a report of the actuary, the rates were materially advanced. The plaintiff's contribution to the order was \$321.80, which was claimed to be less by \$141.43 than what would have been paid by him under the proper rates.

"One of the questions involved in this case was the provision for paying a member benefits upon his reaching the age of 70, with which question we are not here concerned."

Plaintiff's contention was that the rate of assessment was fixed for him by the certificate and by-laws in force at the time he became a member, and that as to him such rate could not be increased. The court said:

"As to assessments. No limit is fixed in the Statute of 1869, or in that of 1893, or in the laws of the order, of the number of assessments which may be made. Indeed, it is contemplated that assessments shall be made whenever necessary to pay promised benefits. It is true that the Laws of 1893, 1895, 1897 and 1899, fixed a rate of assessment and provided that a member should pay the same rate of assessment so long as he remained continually in good standing. This provision did not exist at the time complainant became a member, unless its equivalent is found in the Statute of 1869. It is there provided that the right to

change the by-laws should exist, 'except so far as they relate to the rights of the corporation to assess their members, or the members of a particular class of such corporation, and except, also, so far as said by-laws affect the rights and benefits belonging to, or to be derived by the members of such corporation. One of the powers incident to corporate existence, and implied in the absence of express restrictions, is the power to make by-laws for the government of the corporation. Under the law of its organization, this power of this corporation was restricted. The provision above recited, read in connection with the requirement that the terms and conditions of membership should be stated in the articles of association, must be construed to mean that the terms and conditions of membership so expressed should not be changed by the adoption or amendment of by-laws. In this view, the application and the certificate, supplemented by the laws of defendant, fixed complainant's rate of assessment, and his agreement that the laws thereafter adopted should be the basis of the contract, means, those laws which the defendant had the right to adopt. But there was no such restriction in the Law of 1893, under which defendant reincorporated, presumably with the consent of appellant, and the question arises whether such reincorporation and the consent of the members thereto, had any effect upon the terms and conditions of appellant's contract. We are of opinion that after the lapse of ten years it is too late for one who was a member when the reincorporation took place to insist that the certificates then in existence shall be treated otherwise than as if they had been issued by the defendant after such reincorporation, especially when the member is in-

sisting that a provision of his contract, ULTRA VIRES the power of defendant under the Act of 1869, is binding upon defendant because of increased powers given by the Statute of 1893.

“Whether the changes with respect to assessments made in 1904, against which he protests, are within these powers, remains to be considered. We have no doubt that it was lawful and no violation of contract rights for defendant to increase the number of assessments to meet the demands arising from the death of members. There seems to be no good reason why fewer assessments at a greater rate should not be levied, so long as the increase in rates is proportional; young and old members alike, contributing. Whether such action be a mere detail in management aimed at procuring for distribution the same sum of money in a different way, or intended to actually increase the contributions over present necessities for distribution and to accumulate a fund, it may be, so long as it is proportional and reasonable, supported, as against a protesting member, by his agreement in his application to conform to and be governed by laws to be from time to time made by the representative governing body of the association. While courts are not agreed upon this proposition, we are inclined to the views expressed in

*Fullencider v. Supreme Council,
Royal League*, 180 Ill., 621; 54
N. E., 485; 72 Am. St. Rep., 239.

*Messer v. Ancient Order United
Workmen*, 180 Mass., 321, 62
N. E., 252.

Reynolds v. Supreme Council, 78
N. E., 129, 192 Mass., 150.

Conner v. Supreme Commandery,
97 S. W. (Tenn.), 306.

"We agree with the court below that the increased assessments are not, in view of the conditions disclosed, unreasonable. Whether they evidence a departure from the statute purpose and plan of existence of such association is a question not presented."

Fullenwider v. Royal League, 180 Ill.,
621, 54 N. E., 485.

This was an action to enjoin the enforcement of an increased rate of insurance.

The payment of plaintiff's certificate was based upon his compliance "in the future with the laws, rules and regulations now governing said council and fund, or that may hereafter be enacted by the Supreme Council to govern said council and fund."

By-Law No. 6, in force when this certificate was issued, provided that "every person, before becoming a beneficial member, shall pay to the collector the following rates for the widows' and orphans' benefit fund, and the same amount on each assessment thereafter whilst he is a member of the order."

Plaintiff's rate was increased from \$2.62 to \$4.52.

The position taken by plaintiff's counsel was that the society was without power to raise the rates except as to old members.

Held, that the change in rate was valid, and authorized by the reserved power to amend.

Miller v. National Council, 69 Kan.,
243, 76 Pac., 830.

"This certificate is issued upon the express condition that the said insured shall in every particular, while a member of the order, com-

ply with all the laws, rules and requirements thereof, and shall at his death be a member in good standing of said order."

Held, to be an agreement to comply with a subsequently enacted by-law increasing rates.

Barbat v. Mutual, etc., 100 Ga., 681.

Even though a table of rates is set out in the benefit certificates, this is not intended to limit the gross amount of members' contributions, as he may be called upon to pay extra assessments.

Conner v. Golden Cross, 117 Tenn., 549, 97 S. W., 306. (Suit on policy.)

The certificate provided that it should be valid and binding "upon condition that the members should comply in the future with the laws, rules and regulations that may hereafter be enacted by the Supreme Commandery to govern said Commandery and fund."

Rates were increased in 1900 and 1903. The last assessment made the rate of insured \$144 per year instead of \$52.08. It was found as a fact that the order had been operated at a loss and so change was imperative.

Held:

That the rate was not unreasonable.

It was provided in the rules or by-laws of "The Golden Star Degree" (on initiatory degree) that members of that degree should pay the same amount on each assessment while a member of the order, held, that this provision meant nothing more

than that the rate would not be increased, EXCEPT UNDER THE RULES AND BY-LAWS OF THE COMPANY.

That there was a right to re-rate.

Woodman of the World v. Woods, 34
Col., 1. (Suit on policy.)

The certificate provided that the beneficiary should be paid a certain sum, "subject to all the conditions named in the certificate, and named in its fundamental laws, and liable to forfeiture if said neighbor shall not comply with said conditions, laws and such by-laws and rules as are or may be adopted by the head camp or the local camp of which he is a member."

In 1890, the appellee's husband became a member of the society and subsequently his occupation was classed as hazardous and persons therein required to pay twenty cents per thousand more of benefits than others not so engaged and the rate of insurance generally was raised. There was also a question with particular reference to an equalization fund and it was contended that the amendments affecting this fund (a) impaired the obligations of assured's contract and (b) were not within the reserved power to amend.

Held, that the language used was sufficiently broad to authorize an increased assessment.

Williams v. Supreme Council, 152
Mich., 1, 115 N. W., 1060.
(Suit to enjoin new rate.)

By the laws of the association (section 1) a schedule of rates was adopted. By article 2, Section 6, it was provided:

"Members shall be assessed according to their age when admitted in accordance with the graded scale of assessments as prescribed by the Beneficiary Fund Article. Their assessments remaining the same thereafter."

The certificate provided :

"This certificate is issued upon the express condition that said Michael Williams shall in every particular, while a member of said association, comply with all the laws, rules and requirements thereof."

The rate was increased from \$1.65 to \$5.86, and this suit was brought to enjoin the putting into effect of the new rates.

Held :

That the increased rate was authorized under the reserved power to amend.

Where the right to change the by-laws of a fraternal beneficiary society is reserved in the contract, the association has the right to make changes even though they "affect the contract."

1 *Cooley's Insurance Brief*, 217.

Reynolds v. Supreme Council, 78
N. E., 127; 7 L. R. A. (N. S.),
1151; 192 Mass., 150.

The case last cited distinguishes clearly between the cases where an attempt is made to reduce the amount of the benefit certificate and thus affect the promise of the society to the member and where changes are made in the rates of assessment to enable the society to meet its obligations.

Moore v. Life & Annuity Assoc., 148
P., Kan., 981.

Plaintiff brought an action to compel defendant to live up to terms of his policy providing for issuing of paid-up policy after twenty years. After policy was issued and in force about thirteen years. In 1913, defendant adopted by-laws which abolished the system of issuing policies for a term of years and further providing that all members should continue to pay their present rate of assessment during life. The certificate was issued upon an application which provided that applicant took certificate "subject to laws and constitution in force or thereafter enacted." Held (following *Miller v. National Council*, 69 Kansas, 234; 76 Pac., 830), that in order to determine the rights of the parties, it is proper to look to the by-laws of the association and the applications, and that so, construing the contract, the plaintiff was bound by new law, there being no claim that it was not reasonable and necessary to the accomplishment of the purposes of the association. (Rehearing denied, 151 P., 1107.)

In case of *Kirk v. Fraternal Aid Association* (149 P., 400), the Supreme Court of Kansas held that under an agreement that insured should be bound by laws in force or thereafter enacted, that a by-law lawfully passed was valid even if its operation affected a change in benefits of certificate at first issued.

In the case of *Thomas v. Knights of Maccabees of the World* (85 Wash., 665; 149 P., 7); the issues raised on appeal are discussed and the opinion written in decision of this case by trial court and also opinion in case of *Wright v. Maccabees* (196 N. Y., 391) commented upon.

The court held, that although at time insured joined the order, there was a provision that he

should pay same rate of assessment as long as he continued a member of the order, there also being a reserved right to amend by-laws, no vested right of insured was violated by increasing rate of assessment to an amount necessary to pay death claims.

In the case of *Uhl v. Life & Annuity Assoc.* (155 Pacific, 927), where the issues arose out of a contract of insurance issued by a fraternal society in which contract it was stipulated that insured was to be bound by future amendments to by-laws of society it was decided:

That it was to be inferred that such future amendments are to be fair and reasonable.

That in order to be deemed necessary to the purposes of a fraternal society, a change in its by-laws need not be indispensable to that end. If it is reasonably adapted thereto the requirement is met.

Whether changes made in the by-laws which affect the rights of a member, in such an association are fair and reasonable is ordinarily a question of law, where the detailed facts are not in controversy.

The case of *Neuman v. Supreme Lodge* (70 So., 241), is a case directly in point with the present case on appeal and, considering Appellant's Exhibit "A," being the by-laws of 1888, as part of contract between parties hereto, the case last cited is identical with present case on appeal. The insured in that case obtained his certificate in 1890 and Constitution of 1888 was part of his contract. The Supreme Court of Mississippi in deciding the case, held the change in rate of assessment in 1910 by appellant lawful and reasonable and that the authority in appellant could not be doubted or debated when Constitution of 1888 was deemed part of contract.

The court further intimates that even if the Constitution of 1886 were part of contract, the change in assessment was lawful, for the court say at page 245:

“*Leaving out of view* other provisions in the contract and laws of the Association, he agreed in his application for membership that he would be governed, and that his contract should be controlled by the laws then in force, or that might thereafter be enacted. If he had intended to limit the future laws that might be enacted to such as should affect him only in his relationship as a member of the Association, he should not have agreed that his contract should be controlled by future laws.

“We recognize the dual relationship which appellant bore to the association that of insurer and the insured as pointed out in *Reynolds v. Royal Arcanum*, *Williams v. Supreme Council*, etc., and *Thomas v. Knights of Maccabees*, etc., *ubi supra*, and the reasoning in those cases, showing the distinction between a law which affects the obligation of the association to a member, as the insured, and one which affects so much of his contract with the association, as relate to his duties as insurer, and we approve the reasoning and conclusion reached in those cases.”

The cases hereinbefore quoted are authority both upon the question of the right to amend and also authority for the proposition that where the increase provided for by amendment is no more than is necessary for the society to meet its death claims according to the tenor of the certificates that such increase is reasonable and within the scope of the reserved powers of the society.

It only remains for appellant to call to this court's attention, two cases decided by the Federal Courts, one by this court and one by the United States Circuit Court of Appeals for the seventh circuit which are decisive of the questions raised on this appeal as to the right of the appellant to increase the rate of assessment upon members of the Fourth Class in 1910. Both of these cases involved a contract of insurance which would be identical with the contract of insurance which the appellee claims he held with appellant, that is even assuming that the by-laws and Constitution of 1886 forming part of the contract between the parties hereto.

In the case of *Supreme Lodge, Knights of Pythias v. Mims* (241 U. S., 574; 36 Sup. Ct., 702, 60 L. Ed., 1179), this court in speaking of the rights of appellant under its charter to legislate with respect to increasing assessments used the following language:

"In our opinion the present charter like the first must be construed to authorize such an increase and the clause in the law of 1884, relied upon—that the payments should continue the same so long as the membership continued — was not a contract but was a regulation subject to the possibility inherent in the case. More than ambiguous words in an amendable law would be needed to establish a departure from the ground on which the relation of the parties obviously stood and to create a privilege that attacked the corporation in its very life."

In the case of *Holt v. Supreme Lodge, Knights of Pythias*, 235 Fed., 885, the action was brought by the plaintiff et al. against defendant for an

accounting and receivership and the basis of the action was that the enactment of the by-laws in 1910 by the defendant in that action who is the appellant in this case was illegal and inoperative. The Circuit Court of Appeals for the seventh circuit upon the authority of *Mims v. Supreme Lodge* last above cited and quoted decided that the bill of plaintiff be dismissed and adjudging that the legislation enacted by the defendant in that case and the appellant in this was within the scope of the corporate authority.

RIGHT TO CHANGE PLAN OF INSURANCE.

The effect of the legislation of appellant society in 1910, as far as benefits payable to policy holders was concerned, was to insure the payment of the face of the policy in full.

The certificates of the members of the Fourth Class or a number of them contained a provision in brief that the beneficiary was entitled only to the avails of an assessment upon the remaining members of the class. The plan which resulted from the legislation of 1910 insured every policyholder the full value of the face of his policy, which was in truth what every policyholder believed would be paid, and the policyholder unquestionably paid his assessment upon that belief. The changed plan was for the benefit of the members and it was equitable and just. The evidence in this case demonstrates that the society could not continue upon the old rates of assessment. The increase in rates and the changed plan as to payment of policies were measures which appellant could lawfully adopt.

There is no vested right in the member of a fraternal beneficiary society to the continuance of a

plan of insurance which experience has demonstrated would result disastrously to the company and its members.

Korn v. Mutual Assurance Society,
6 Cranch, 192.

Wright v. Mutual Life Ins. Co., 193
U. S., 657.

Polk v. Mutual Reserve Fund, 207
U. S., 310.

In the case of *Korn v. Mutual Assurance Society* (6 Cranch, 192) it appeared that Korn and Weismiller, who were residents of the City of Alexandria, were members of the Mutual Association Society of Virginia, in which certain buildings belonging to them were insured. The society was incorporated by the Legislature of Virginia, and when the City of Alexandria was ceded to the District of Columbia, the General Assembly of Virginia passed an act permitting the society to carry insurance on buildings within such city, provided Congress should permit this to be done. On the 3rd of March, 1803, Congress did pass an act, such as was contemplated by the Virginia Legislature. Each person on becoming a member of the society agreed to observe and adhere to the constitution and laws of the society which were already established or that might be thereafter established. An amendment was made subsequent to Korn and Weismiller becoming members which divided the funds of the society between the town of Alexandria and the country in proportion to the capital subscribed by the town and country, respectively, and provided that the town funds should be liable only for town losses and the country funds for

country losses only. This alteration, it was contended, was a material one which released the non-assenting members from any liability. This contention was denied by the Supreme Court in the following language:

"As that is contended to be a material alteration in their charter we consider it merely a new arrangement or distribution of their funds; and whether JUST OR INJUST, REASONABLE OR UNREASONABLE, BENEFICIAL OR OTHERWISE, to all concerned was certainly a matter of speculation, proper for the consideration of the society, and which no individual is at liberty to complain of, as he is bound to consider it, as his own individual act. Every member, in fact, stands in the peculiar situation of being party of both sides, insurer and insured. Certainly the general submission which they have signed will cover their liability to submit to this alteration."

This part of the court's opinion is quoted with approval in the case of *Fidelity & Casualty Company v. Freeman* (109 Fed., 857).

This doctrine was again reiterated in *Mutual Ins. Soc. v. Korn* (7 Cranch, page 96).

In *Wright v. Minnesota Mutual Life Insurance Co.*, *supra*, a bill was filed by two dissatisfied policyholders who held certificates which had been issued while the company was doing business on an assessment plan. Under the laws of Minnesota the company had changed its plan of insurance from an assessment to a reserve, flat premium plan of "Old line" insurance. It was claimed by the dissatisfied members that the legislation of Minnesota permitting such a change was to be made upon

the consent of a majority of the members, impaired the obligation of a contract and was, therefore, violative of Section 10, Article 1 of the Constitution of the United States.

The opinion of the court in this case so fully and ably answers complainant's contention here that we give the following somewhat lengthy excerpt therefrom:

"There is much discussion in the authorities as to when a charter amendment is of that fundamental character that a majority of the members of stockholders cannot bind the minority by agreeing to a change in the nature of the business to be carried on or the purposes and objects for which the corporation was created. Each case depends upon its own circumstances, and how far the right of amendment has been impliedly or expressly reserved in the creation of corporate rights. It would be unreasonable and oppressive to require a member or stockholder to remain in a corporation whose fundamental purposes have been changed against his will. On the other hand, where the right of amendment is reserved in the statute or articles of association, it is because the right to make changes which the business may require is recognized, and the exercise of the privilege may be vested in the controlling body of the corporation. In such cases where there is an exercise of the power in good faith, **WHICH DOES NOT CHANGE THE ESSENTIAL CHARACTER OF THE BUSINESS, BUT AUTHORIZES ITS EXTENSION UPON A MODIFIED PLAN, BOTH REASON AND AUTHORITY SUPPORT THE CORPORATION IN THE EXERCISE OF THE RIGHT.**

Nugent v. The Supervisors, 19 Wall.,
241, 251.

Picard v. Hughey, 58 Ohio St., 577.

Miller v. Insurance Company, 92
Tennessee, 167, 185.

Supreme Lodge, Knights of Pythias
v. Knight, 117 Indiana, 489.

“ In the present case we have by express stipulation the right to amend the articles, with the reservation noted as to Article 10. Nor does it appear that the changes were arbitrarily made without good and substantial reason. The testimony in this record discloses that the experience of this assessment insurance company was not anomalous or unusual. It was a case of history repeating itself. Insurance payable from assessments upon members may begin with fine prospects, but the lapse of time, resulting in the maturity of certificates, and the abandonment of the plan for other insurance by the better class of risks, has not infrequently resulted in so increasing assessments and diminishing indemnity as to result in failure. The testimony that such was the history of this enterprise is ample. The changes of 1898, to a plan of issuing, in exchange for certificates and upon new business, a policy having some of the features of old line insurance, seems to have been fully justified by the state of the company's business. And the subsequent change to a policy with straight premiums and fixed indemnity was approved by the majority of the members upon proceedings had under the Minnesota statute, and has resulted in a successful business and a considerable change of the members to the new and more stable plan. It does not appear that any certificate has been unpaid, nor is any failure shown to levy assessments required under the original articles.

“It is doubtless true that the assessments have increased owing to the lesser number subject to assessment and the death of members. What would have been realized from assessments had there been no change of plan is a matter of conjecture. The business is still that of mutual insurance, notwithstanding changed methods of operation. The new plan has been legally adopted and approved by the insurance commissioner of the State. The argument for appellants is that, having begun as an assessment company, the plan can never be changed without the consent of all interested. But we have seen that the right of amendment was given in the original articles of association. There was no contract that the plan of insurance should never be changed. On the contrary, it was recognized that amendments might be necessary. **THERE WAS NO VESTED RIGHT TO A CONTINUATION OF A PLAN OF INSURANCE WHICH EXPERIENCE MIGHT DEMONSTRATE WOULD RESULT DISASTROUSLY TO THE COMPANY AND ITS MEMBERS.** We are cited to the statutes of many States authorizing similar changes and transfer of membership, but to no case holding legislative authorization of a change of this character to work the impairment by the state of the obligation of a contract.

“The courts are slow to interfere with the management of societies, such as this mutual insurance company. While the rights of members will be protected against arbitrary action, such organizations will ordinarily be left to their own methods of action and management. The changes under consideration were made in good faith and have been accepted by many of the old members as well as

those who have taken policies since the changes in plan have been made. In our view of the case, the law of Minnesota did not impair the obligation of any contract, nor were the changes in the method and plan of this company beyond its corporate powers. There is much testimony in the record as to the good faith of this proceeding and the motives of the complainants in bringing it, which we do not deem it necessary to consider, as the conclusions announced dispose of the case in favor of an affirmation of the judgment."

The doctrine in the Wright case has, however, been considerably extended by the Supreme Court of the United States in the case of *Polk v. Mutual Reserve Fund* (*supra*). The society in that case was a mutual benefit insurance society originally incorporated in 1875 and reincorporated in 1883. While these charters were in force, they provided for "The transaction of life insurance upon the co-operative or assessment plan." The Legislature of New York authorized the reincorporation of the society upon a legal reserve plan and the effect was "to broaden the business from that of merely co-operative and assessment life insurance to life insurance of every kind."

An attempt was made to distinguish the Polk case from the Wright case (*supra*), on the following grounds:

(a) Because in the Wright case the power of amendment was reserved in the articles of association, while no such reservation was made in the Polk case.

(b) That in the Wright case the change was made by a majority of the members of the association, while in the Polk case it was made

by a majority of the directors without the consent of the members.

(c) That in the Wright case the corporation was solvent. The court in answering these several attempted distinctions said that although no power to amend was reserved in the articles of association in the Polk case such power was reserved by the constitution of New York in force since 1846, that in such case the change was made in conformity with the provisions of a law authorizing it; that the change could be made by a majority of the directors, if authorized by law as well as by a majority of the members, and that the question of the solvency of the corporation did not determine the constitutional question raised. Among other things the court said:

“The other two questions certified require whether the law under which the reincorporation was made, or the reincorporation and changes in power made under its provisions, are in violation of the Fourteenth Amendment to the Constitution of the United States. These questions do not require separate or detailed consideration. As applied to the facts of this case, they are practically dealt with in the discussion which has preceded.

It is not suggested that any rights secured to the complainants by the Fourteenth Amendment were violated in any other manner than by the reincorporation of the association without the consent of its members, the change in and addition to its powers, and the consequent effect upon the contract rights of the complainants and upon their relation to the corporation. But it has been shown that the contract rights of the complainant have not been affected by the reincorporation, and the same reasoning that leads to the conclusion that the changes

in the charter powers made under the reserved powers of the State do not violate the Fourteenth Amendment. In fact, the only suggestion of a violation of the Fourteenth Amendment made to us is that the reincorporation, under the circumstances of this case, deprived the complainants of their vested rights and privileges and property rights under their contracts, without due process of law. Since the incorporation has deprived the complainants of no vested rights, privileges or property, the contention fails.

“The whole argument of the complainants upon these constitutional questions, though enveloped in many words and presented in divers forms, rests upon a single proposition. That proposition is that they, having become members of an association insuring lives upon the co-operative and assessment plan, and being, therefore, in a sense both insurers and insured, have a vested right that the association shall not without their consent, engage in other kinds of insurance, which may and probably will indirectly affect for better or worse, the relations to it. The trouble with this proposition is that it was made and denied in the Wright case.”

Where a certificate is made subject to all laws in force at the time of its issuance or thereafter to be adopted under the authority of the three cases last considered, the power to the society is broad and comprehensive, and changes may be made in accordance with the constitution of the order by a majority of the members or by a majority of the governing body, provided such changes are made according to the established procedure, even though such changes would result in an increased rate of contribution.

It is respectfully submitted that applying the doctrine of law laid down in the foregoing authorities to facts of case at bar that the action of appellant in increasing rates of assessment upon members of the Fourth Class in 1910 was within the scope of powers reserved to appellant in its contract with appellee and the amount of such increase be only such as would be necessary to fulfill its insurance contracts, the appellee has no cause of action against the appellant.

POINT IV.

The rights of appellee are to be determined by the Federal Charter of 1894. He can claim no rights existing under the old articles of incorporation and charge such liability against the newly created corporation.

Section 3 of the Federal Statute constituting Appellants charter is as follows:

“That all claims, accounts, debts, things in action, or other matters existing for or against the *present Supreme Lodge, Knights of Pythias*, mentioned in Section “1” of this act, shall survive and succeed to and against the body corporate and politic hereby created; provided that nothing contained herein shall be construed to extend the operation of any law which provides for the extinguishing of claims or contracts by limitation of time.”

(28 U. S. Stat. at large, 96, 97.)

It will be noted that all claims existing against the *present Supreme Lodge Knights of Pythias* sur-

vive and succeed against the new corporation. The appellee's certificate was issued in 1889, and, therefore, constituted a claim against the old Supreme Lodge Knights of Pythias which expired by virtue of limitation of the law creating it, August 5, 1890. The *present Supreme Lodge, Knights of Pythias* " in 1894, at the time of the passage of the act chartering the appellant, existed as what might be deemed a voluntary association of members carrying on the business of insurance within the membership of the order of Knights of Pythias. The charter of the new corporation constitutes the measure of its rights and duties to members of said voluntary association, who continued under said new charter and voluntarily assumed duties and responsibility under such new charter, and they are not governed by any duties or responsibilities sustained under the defunct corporation which legally expired in 1890.

The new charter expressly provides in section 4 thereof "That said corporation shall have a constitution and *shall have power to amend the same at pleasure.*" It would be a perversion of the purposes of this Fraternal Society to grant to certain of its members valuable rights which it did not extend to others. It cannot be presumed that any of the membership at the creation of the new corporation intended that one class of members of the new corporation should have special privileges which would be denied to others. It would certainly be fatal to the welfare of any fraternal Insurance Society to grant a lower rate of insurance to one class of members while at the same time charging a much higher rate to others. There can be no contention founded upon the evidence in this case that

the voluntary Association existing in 1894 owed to this plaintiff any special or peculiar obligation which it did not owe to every other member of said Association. When the charter of the old corporation expired the rights and duties thereunder expired with it, and the voluntary Association which afterwards conducted the business was purely fraternal and the rights of the members thereof were equal. There is no showing from the evidence in this case that under said Association this plaintiff occupied a superior position or was in any special class, having greater rights than any other person or class. Indeed, there is no evidence in this case showing just how the voluntary Association was conducted unless it be assumed that the constitution and by-laws of 1888 were used as the governing rule. The presumption would naturally be in the absence of affirmative evidence that the members of said voluntary Association contributed to the general fund in just and proper amounts according to the requirements of insurance business, and that upon the death of anyone the stated amount was paid to his beneficiary. When the plaintiff and his associates accepted the statute of 1894 as their law, they thereby agreed that the Supreme Lodge should have plenary power to amend the constitution and by-laws thereof. A material part of the constitution and by-laws consisted in the regulation of the rates of said Society for the purpose of maturing the outstanding Insurance certificates. Indeed so far as the Insurance Department is concerned that has been the one clear object to be attained—the payment of its certificates. There is no other way known to pay certificates except to collect the money from the membership with which to pay same. This corpora-

tion had no magic powers with which to create money. It was positively known to every member that the money with which his certificate was to be paid must of necessity come from the contribution of the other certificate holders. When it became apparent to everyone in 1910 by the almost complete use of the reserve, that the Society would be insolvent perhaps within a year, a competent actuary prescribed the rates necessary to the solvency of the department. These rates are admitted to be necessary for the payment of the certificates outstanding. There is not evidence that either the Actuary or the Supreme Lodge in fixing the rates had in mind that any individual or class of individuals should have the right to insurance upon a wholly inadequate rate. The charter of 1894 being silent upon the grant of special favors to any members, the Actuary taking no special classes of unpaid certificates into account, and the Supreme Lodge having fixed the rates upon a basis of equal payments by all, it will be necessary for the plaintiff in order to establish such rights as he claims, to show by such clear, unequivocal, and undoubted testimony his special rights as will leave no possible room for doubt.

Having failed to do so, his rights must be considered as merely the equal and not the superior of the rights of other members. The question whether this plaintiff has superior rights was directly in issue in the case of *Supreme Lodge, Knights of Pythias v. Mims (supra)*. In that case the plaintiff claimed rights under the same by-laws and in that case the contentions of the plaintiff were justly denied. It was held that the essence of the arrangement was that the members took the risk of events

and that if the rate was found to be insufficient an increase could be properly made sufficient to mature the certificates. This was decided after an elaborate argument in that case which we do not deem necessary to restate. We, therefore, earnestly insist that before the plaintiff can sustain his theory in this case, it will be necessary for him to show by positive and incontrovertible evidence that since the charter of 1894 was granted to this Society he has become the recipient of the special contract and special rights which he claims, by some positive, affirmative, act of the new corporation. Since he has utterly failed to show this, the presumption is conclusive against him.

POINT V.

The relief prayed for by plaintiff the trial court had no jurisdiction to grant, it being an interference with internal management of a foreign corporation.

The prayer of the plaintiff in the case is:

“That the defendant be restrained from cancelling or attempting to cancel the policy issued to this plaintiff. That the defendant be restrained by the judgment of this Court from demanding from the plaintiff said increased payment. That the defendant be restrained from cancelling said policy and from demanding that plaintiff be required to surrender the same. That in case defendant shall attempt to cancel said policy or shall cancel the same upon its books, before the judgment of this Court can be obtained, that then the de-

fendant be required to restore said policy and to continue the same as in and by its provisions required and agreed upon between plaintiff and defendant at the issuance of said policy and as provided in and by its terms." (Fol. 19.)

The defendant corporation has sections all over the United States. A glance at authorities cited in Point III clearly establishes that in **many of the States** its authority to **perform acts** complained of in this case were clearly within its corporate rights. Plaintiff's own State has, by its court, decided defendant has no such right. The policy of plaintiff provides his beneficiaries are to receive \$3,000 in case one assessment upon all members of his class equals that amount. If the law as established by trial court in this case prevails, how would defendant levy an assessment upon members of the Fourth Class remaining? Would it levy the old rate of assessment upon the remaining members in New York State and exact of members in Massachusetts, Connecticut, Illinois and Minnesota the new rate when plaintiff has all along contended that the new rates were invalid? This is by no means a supposition of the development of an improbable situation.

This result would be brought about by the interference by a local judicial tribunal with the internal affairs and management of a foreign corporation.

We submit that the plaintiff asked for and the court below granted a prayer for relief that interfered with internal management of defendant.

The rule is:

"That where the act complained of affects the complainant solely in his capacity as a member of

the corporation, then such action is the management of the internal affairs of the corporation, and our courts will not take jurisdiction."

Worth Copper State Mining Co. v. Field, 64 Md., 154.

Republican Mountain Silver Mine v. Brown, 58 Fed., 648; 7 C. C. A., 412; 24 L. R. A., 776.

Leary v. Navigation Co., 82 Fed., 777.

London v. Bank, 117 Fed., 609.

Parke v. United States Bankers Corp., 140 Fed., 160.

Lidway v. Missouri Land Co., 101 Fed., 486.

Clarke v. Mutual Reserve Assn., 14 App. D. C., 154; 43 L. R. A., 390.

The latter case was a suit on the part of a member of a fraternal society to restrain the increase of rates and almost identical with the case at bar. In deciding the case the court say:

"It is apparent from the statement of the facts alleged in the plea that the relief sought if it could be granted, would require the control, direction and revision of the internal affairs of the corporation by a court of equity in this district. This we think upon the clearest authority cannot be done."

In the case of *Taylor v. Mutual Reserve Fund Life Association* (45 L. R. A., 621), the court use the following language in discussing the proposition, which language is clearly applicable to the case at bar:

"It is manifest that the courts of no state, than that of the domicile of the foreign corporation,

ought to attempt to exercise any such power over it. To do so would render it dangerous for a corporation to do business beyond the limits of the home state. Its books and papers might be required at the same time in the courts of many or all of the states. Each of these courts after overhauling its internal management to see what would be a reasonable rate of assessment, might determine the case differently, thus leading to confusion and injustice in the administration of the internal affairs of the corporation. The courts even if they had such power, would be slow to assert it, when its exercise would lead to such results, but would rather leave the parties to litigate their rights in the courts of the states under whose laws the corporation had been created."

In the case of *Gaines v. Supreme Lodge, Royal Arcanum* (140 Fed. Rep., 978), the plaintiff undertook, just as in this case, to interpose by injunction and prevent the cancellation of his certificate and the enforcement of a by-law increasing the rates of assessment, and on the question of jurisdiction the court in that case said:

"It must be apparent that it is an extremely delicate question for the courts of any jurisdiction other than Massachusetts, the State of defendant's creation and the State of its domicile, to interfere by the injunction with the internal regulation and management of the affairs of this benevolent association. The contract is, of course, found not only in the certificate of membership, but in the properly adopted by-laws and regulations of the laws of Massachusetts, under which the association is incorporated and it is obvious enough that the law of Massachusetts furnishes the rule for the decisions of the question now up for disposition and

of similar questions relating to this association and its powers and authority. If the court may interfere by injunction in a case like this, it must be distinctly upon the closely drawn issue whether vested and constitutional protected rights are being interfered with or impaired.

"If the courts of any state may exercise jurisdiction for such purpose outside of the state in which the defendant association was created and has its principal office and domicile, it is equally true that the courts of 43 or 44 different states, where members may be can exercise similar power and authority. If this were done, it would speedily bring about such a situation as would make emphatic the proposition that the courts of any state, other than Massachusetts, should only exercise authority to interfere by injunction with the internal management and operation of the association upon the clearest and most cogent grounds."

The following cases also tend to sustain the proposition set forth in the opinion quoted above:

Madden v. Penn. Elec. Light Co., 38 L. R. A., 638.

Condon v. Mutual Reserve Fd. Life Assn., 44 L. R. A., 149.

Howard v. Mutual Reserve Fd. Life Assn., 45 L. R. A., 53.

Reeves v. So. R. Co., 70 L. R. A., 53n.

Kimball v. St. Louis, etc., R. Co., 157 Mass., 7.

Wesser v. Grand Lodge United Workmen, 180 Mass., 321.

Smith v. Mutual Life Ins. Co., 14 Allen (Mass.), 236.

New Haven Horse Rail Co. v. London Spring Co., 142 Mass., 353.

POINT VI.

Appellee by his own acts acquiesced in and adopted the construction of contract sought to be enforced by appellant.

It is not disputed but that plaintiff's rate of assessment was raised by defendant by its by-laws on two separate occasions. Once in 1894, when dues of five cents a thousand were added (fol. 647) and again in 1901, when rate of plaintiff was increased to \$1.60 a thousand. (Fol. 648.) It is conceded plaintiff paid all his dues as required up to January 1, 1911.

It is true that he says he paid increase from 1901 down under the impression he got from Plaintiff's Exhibit "E" that such increase was to found a reserve fund. But he admits he got notice that his assessment was increased by defendant (fol. 142) and his Exhibit "E" if anything notified him that certain amended by-laws were in force. (Fol. 418.)

Where there is any doubt as to the right of a fraternal beneficiary society to raise its rates, and the society for a long time has claimed such rights and has exercised the same repeatedly, and the member acquiesced in it, he will not be permitted afterward to change his position and challenge the right of the society to increase its rates.

Haydel v. Mutual Reserve Fund Life Assn., 104 Fed., 726.

Insurance Co. v. Dutcher, 95 U. S., 269.

In the case of *Haydel v. Mutual Reserve Fund*, cited above, the court, in discussing this point, say:

"Aside from this view of the case, we may repeat what has been heretofore said, that the con-

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temporaneous construction of the contract by the parties hereto, is of the highest value in settling the true interpretation in those respects where its construction is doubtful and the evidence shows that the Board of Directors of the defendant company had constantly exercised the power of changing the rate of assessment whenever they deemed it necessary to do so and this asserted right was not challenged by the deceased at any time during the fourteen years he remained a member."

From the above authorities it would appear that plaintiff's own conduct in relation to increased assessments levied against his policy in the past precluded him now from questioning the power of appellant to increase assessments under contract of insurance declared upon.

It is respectfully submitted that applying the doctrine of law laid down in the foregoing authorities to facts of case at bar that the action of appellant in increasing rates of assessment upon members of the Fourth Class in 1910 was within the scope of powers reserved to appellant in its contract with plaintiff, and if the the amount of such increase be only such as would be necessary to fulfill its insurance contracts the appellee has no cause of action against appellant.

POINT VII.

The appellee had an adequate remedy at law.

It is the contention of defendant that plaintiff had an adequate remedy at law. If this is correct he has no right to invoke the aid of equity to enjoin defendant from enforcing its duly enacted by-laws.

The admitted facts of case show that the plaintiff at time this action was brought was under sixty years of age. The testimony of witness Wolfe shows (fol. 823) that within his knowledge insurance companies accept insurable risks up to sixty years of age. There is no testimony nor is there any averment that plaintiff was in such a condition of health that he could not purchase insurance elsewhere. The burden is upon the plaintiff to develop such a state of facts as to convince the court to its satisfaction that plaintiff had no adequate remedy at law.

If, as a matter of fact, plaintiff could not have secured the same insurance elsewhere, then for whatever damage he may have sustained by the breach of his contract, if any was committed by this defendant, he could have been fully compensated in damages and he is not entitled to the relief prayed for in this case.

We claim in this case the plaintiff has an adequate remedy at law and can be fully compensated in damages under the rules laid down by the court.

Mutual Reserve Fund Life Assn. v. Fereneback, 114 Fed. Rep., 342, 75 C. C. A., 304.

(Also case notes in this case where cases on subject are collected and distinguished.)

POINT VIII.

The decree of the trial court and decree of the Circuit Court of Appeals were both erroneous and should be reversed.

Appellant has pointed out its several reasons wherein it contends the trial court and circuit court of appeals erred.

As hereinbefore noted the decisions of this court support the contention of appellant and in matters of insurance contracts the Federal Courts will follow their own rules irrespective of the precedents of any State.

The Barnstable, 181 U. S., 464.

Washburn v. Insurance Co., 179
U. S., 1.

Pleasant Township v. Insurance Co.,
138 U. S., 67.

Manhattan Life Ins. Co. v. Brough-
ton, 109 U. S., 121.

Carpenter v. Insurance Co., 16 Peters,
495.

The decisions of the several States as noted in Point III are in accord with decision of this court as to right of appellant to increase rates.

The whole case, both as to law and the facts, is to be considered by this court, and upon the whole case, both as to law and the facts, it is respectfully submitted that appellant is entitled to a judgment of reversal.

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JAMES D. MAHER,
CLERK.

Supreme Court of the United States

OCTOBER TERM, 1916.

No.  107

SUPREME LODGE, KNIGHTS OF PYTHIAS,

Appellant,

vs.

ARTHUR V. H. SMYTH,

Appellee.

BRIEF FOR APPELLEE.

Appeal from the United States Circuit Court of Appeals
for the Second Circuit.

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Supreme Court of the United States

OCTOBER TERM, 1916.

No. 389.

SUPREME LODGE, KNIGHTS OF
PYTHIAS,

Appellant,

against

ARTHUR V. H. SMYTH,

Appellee.

BRIEF FOR APPELLEE.

Facts.

Appellee testified he was a physician residing at Amsterdam, New York, and a member of the Knights of Pythias since 1888, and had always been in good standing in the lodge (fols. 131, 132, 133). On or before the 26th day of October, 1889, appellee signed an application for a certificate of membership (Plaintiff's Exhibit A, pp. 54-67), in which he stated he was desirous of becoming a member of the "Endowment Rank, Knights of Pythias." In that application, it is stated, "This application shall become part of the contract, if accepted" (fols. 225, 226). That his age at the nearest birthday was thirty-seven

(fol. 227). This application contained a "table of monthly assessments" and opposite the age of thirty-seven, the rate \$1 for each \$1,000 (fols. 221-224). It also contained the following: "I hereby agree that I will punctually pay all dues and assessments for which I may become liable, and that I will be governed, and this contract shall be controlled by all the laws, rules and regulations of the order governing this Rank now in force or that may hereafter be enacted by the Supreme Lodge, Knights of Pythias of the World, or submit to the penalties therein contained. To all of which I willingly and freely subscribe. Dated, at Amsterdam, N. Y., this the 26th day of Oct., 1889. Signature of applicant, Arthur V. H. Smyth" (fols. 236, 237).

The policy of insurance of appellee was received in evidence and marked Plaintiff's Exhibit B. It is printed at length at folios 268-275. Delivered to appellee at the same time with his policy were Exhibits C, D and E, which were received in evidence. It was "issued" November 7th, 1889, by the proper home officers and accepted by appellee at Amsterdam, N. Y., November 26, 1889, signed and attested by Jacob L. Fredendall, Secretary Sec. No. 279 (fols. 273, 274).

The policy contains the following statements: "In consideration of the representations and declarations made in his application, bearing date of October 26, 1889, which application is made a part of this contract, and the payment of the prescribed admission fee; and in consideration of the payment hereafter to said Endowment Rank of all assessments as required, and the full compliance with all the laws governing this Rank now in force, or that may hereafter be enacted and shall be in good standing under

said laws the sum of THREE THOUSAND DOLLARS, will be paid by the SUPREME LODGE, KNIGHTS OF PYTHIAS OF THE WORLD, to His Children as directed by said Brother in his application or to such other person or persons as he may subsequently direct, by change of Beneficiary entered upon the records of the Supreme Secretary of the Endowment Rank, upon due notice and proof of death, and good standing in the Rank at the time of death, and surrender of this Certificate (fols. 268-270).

"Provided further, that if at the time of the death of said Brother, the proceeds of one assessment on all members of the Endowment Rank, shall not be sufficient to pay in full the maximum amount of Endowment held under this Certificate, then there shall be paid an amount, less ten per cent for expenses, equal to the proceeds of one full assessment on all remaining members of the Endowment Rank, and the payment of such sum to the beneficiary or beneficiaries, mentioned herein, shall be in full of all claims and demands under and by virtue of this Certificate. And it is understood and agreed that any violation of the within-mentioned conditions, or the requirements of the laws in force governing this Rank, shall render this Certificate and all claims null and void, and that the said Supreme Lodge shall not be liable for the above sum or any part thereof" (fols. 271-273).

Article 4 of Plaintiff's Exhibit C, Constitution and By-laws of the Endowment Rank, Knights of Pythias of 1886, reads as follows:

"ARTICLE IV.

"MONTHLY ASSESSMENT AND FORFEITURE OF CERTIFICATES OF ENDOWMENT.

"Section 1. Each member of the Endowment Rank, shall, on presenting himself for obligation, pay to the Secretary of the section, in accordance with his age and the amount of Endowment applied for, a monthly assessment, as provided in the following table, and shall continue to pay the same amount each month thereafter as long as he remains a member of the Endowment Rank:

"Table of monthly assessments" (fols. 310, 311).

Then follows four columns giving the different amounts to be paid by a member for \$1,000, \$2,000 and \$3,000 insurance at the different ages from 21 to 60, inclusive (fols. 311-316).

Section 2 of Article IV, of Plaintiff's Exhibit C, reads:

"Section 2. Whenever one monthly assessment by members holding an equal amount of endowment shall not be sufficient to pay the amount of endowment held by a member, the benefit to be paid in case of death shall be a sum equal to one assessment by each member holding an equal amount of endowment" (fol. 316).

Plaintiff's Exhibit D, a pamphlet issued by defendant contains the following paragraph:

"The system of the Endowment Rank is based upon *actual cost of insurance* during expectancy of life, divided, for convenience, into fixed monthly payments during the life of the applicant in accordance with his age at date of

applying for membership. These payments *do not increase* with increasing age, but always remain the same during good standing of the member" (fol. 403).

It also contains a statement as follows: "The following Table of Monthly payments shows the cost under each age and amount of Endowment applied for." Then follows a table of monthly assessments similar to that contained in the application of plaintiff (fols. 405-409).

Plaintiff's Exhibit D also contained a statement, as follows:

"No subordinate lodge should be without this valuable adjunct (referring to the insurance department). Its features combine all the elements of cheapness, reliability and permanence" (fol. 411).

Plaintiff's Exhibit E was received by appellee about 1901 (fol. 141). It is entitled, "Information and Instruction For Secretaries of Sections, Supreme Lodge, Knights of Pythias, Endowment Rank, The Insurance Branch of this Order" (fol. 414).

It contains the following statement:

"Provided that at any time when in the judgment of the Board of Control the condition of the finances of the Endowment Rank will permit, the Board of Control is authorized and directed to suspend the collection of monthly payments" (fol. 428).

About November 10, 1910, appellee was served with Plaintiff's Exhibit F, which stated that beginning January 1, 1911, every member of the fourth class (to which the appellee belonged) shall be rerated and that appellee's monthly payment would be \$14.70, unless he accepted one of several options, all of which

either increased his assessment or decreased the amount payable under the policy and on the acceptance of any of the options his old policy was to be surrendered and a new policy accepted, which contained very different statements and contracts from the old one (fols. 473-482).

The testimony of appellee as to Exhibit C, is as follows:

"When the policy was delivered to me a book purporting to be the constitution and general laws of the Endowment Rank, Knights of Pythias, was delivered to me at the same time with the policy" (fols. 135, 136).

"This little pamphlet, Exhibit C, is the pamphlet that was delivered to me about that time. It was delivered to me with the policy, at the same time the policy was delivered; the same night. A paper which is marked Plaintiff's Exhibit D, was paper delivered to me also" (fols. 136, 137).

"Who gave me this policy I could not tell you now, it was so long ago.

"Q. I think you said something on your direct-examination that the secretary gave it to you? A. I presume the secretary gave it to me.

"Q. Mr. Fredendall was secretary at that time? A. I could not tell you that; I don't know, but I think that he has been secretary ever since I belonged to it" (fol. 152).

"Certain papers were shown to me this morning by Judge Borst which I said were delivered to me by Mr. Fredendall, at the time he delivered this policy. What I mean by that is that those papers were delivered with the policy by whoever delivered the policy to me at that time. I don't know whether it was

Mr. Fredendall or not. I simply assume it was on account of his signature being there. It was after I had made my application for the policy. And the policy had been signed and sent on to Amsterdam. At the time the policy was delivered to me those papers were handed to me undoubtedly by the secretary of the lodge, presumably by Mr. Fredendall; it is too long ago; I could not tell you" (fols. 153, 154).

The testimony of JACOB FREDENDALL as to the delivery of Exhibit C, is as follows:

"The policies came to me and I took it to the doctor. I took it to Doctor Smyth and got his signature, then I added mine to it, and then gave him the policy.

"Q. At the time of the delivery of the policy, did you deliver him a copy of the by-laws? A. I think probably I did, because that was—because generally I delivered a copy of the by-laws with the policy.

"Q. Is that Exhibit C a copy of the by-laws? A. That is a copy of our by-laws" (fols. 176, 177).

"Q. Now, Mr. Fredendall, at that time, was it the practice, was it your practice as secretary and treasurer, to deliver with or before the delivery of a policy, a copy of the by-laws to the person who was taking out a policy? A. In some instances we would and some instances we would not. Sometimes a man would want to take out an application and would want to see the by-laws; would want to look them over. In other cases, they would not ask for them" (fols. 179, 180).

"Q. Can you state whether those that you had at that time, whether this copy here, whether that is a copy of the by-laws and constitution as they then ex-

isted at the time this policy was taken out? A. It is as far as I had knowledge of it.

"Q. Where did you get them? A. They were sent to me from the home office.

"Q. Sent to you from the home office? A. Yes" (fols. 181, 182).

"Q. Had they changed them (the constitution and by-laws) since that time? A. That, I don't remember. I probably gave him the copy of the by-laws that I had at that time. If I had had a later copy, I would have given him that.

"Q. Is it true that when you gave them out at all you gave the latest out that had been sent to you? A. Yes, sir" (fols. 184, 185).

"You do not understand me to say that I have a personal recollection that at the time I delivered this policy to Mr. Smyth, I also handed him a copy of the by-laws; I did not. As a matter of fact, I do not recall anything at all about it. I could not say positively" (fol. 197).

"Q. Mr. Fredendall, do I understand you to swear that the by-laws, which were identified by you, were, in fact, the by-laws in effect in October, 1889? A. To the best of my knowledge they were" (fol. 200).

"Q. You have no recollection that you ever at any time saw any of the by-laws adopted in 1888? A. No.

"By the Court:

"Q. If there was any change in 1888, I suppose the witness means to say that he has no recollection of having been notified of that at the time this policy was issued, and that he was not present when the change was made, is that right? A. That is right" (fols. 204, 205).

It is true that appellee stated that he did not know who gave him Plaintiff's Exhibit C, as stated in the statement of facts of defendant's counsel in his brief at page 13. It will be seen, however, that appellee stated that the same person who delivered his policy to him delivered to him Plaintiff's Exhibits C and D. That Mr. Fredendall stated that although he did not know whether he delivered Plaintiff's Exhibits C and D to appellee; that he did deliver his policy to him. These statements are not contradicted. The facts show beyond question, therefore, that Exhibits C and D were delivered to appellee by Fredendall, the Secretary and Treasurer of defendant.

Defendant's counsel states in his statement of facts at page 14, that Fredendall did not know whether Exhibit C was a copy of the By-laws in existence at the time appellee took out his policy or not. Fredendall stated, however, that he got the copies of the By-laws and Constitution from the home office; that if he had had a later copy of the By-laws he would have given it to the appellee and that he gave to appellee the latest copy of the By-laws he had. That to the best of his knowledge the By-laws that he gave appellee were those in effect in October, 1889. The evidence, therefore, clearly shows that Plaintiff's Exhibit C was delivered to him and was represented to him by the agent of the defendant to be the By-laws in effect at the time appellee took out his policy of insurance with the defendant.

POINT I.

The By-laws of 1886, Plaintiff's Exhibit "C," and not the By-laws of 1888, Defendant's Exhibit "A," were part of the contract between the parties.

The contention of the appellant is that its Exhibit A purporting to be a copy of the Constitution and By-laws of the Insurance Department of the Supreme Lodge, Knights of Pythias, effective August 1st, 1888, should be construed as part of the contract between the appellee and the appellant and not the By-laws of 1886, Plaintiff's Exhibit C. Both the Trial Court and the Circuit Court of Appeals construed the contract as containing Plaintiff's Exhibit C, as part of such contract. The counsel for appellant in his brief, at page 43, states that the appellee said he did not know who gave him Plaintiff's Exhibit C and that Fredendall had no recollection at all about the matter. Appellee stated in his testimony that the pamphlet, Exhibit C, was delivered to him with the policy (fol. 136). There is no denial of that fact. Appellee also stated on his cross-examination that he presumed the Secretary (Fredendall), gave Plaintiff's Exhibit C to him (fol. 152). Later he said that he did not know whether the policy was delivered to him by Fredendall or not; that he assumed it was Mr. Fredendall on account of his signature being there (fol. 154). He also said that the papers (one of which was Exhibit C) were delivered to him with the policy by whoever delivered the policy to him (fols. 153, 154). We have, therefore, the statements of the appellee, which are not contradicted, that Ex-

hibit C was delivered to him at the same time as the policy was delivered to him, and that it was delivered to him by the same person who delivered his policy.

Mr. Fredendall, the secretary and treasurer of the insurance section to which the appellee belonged, by virtue of his taking out the policy in question stated that the policy came to him and that he took it to appellee and got his signature; that he then added his own and gave appellee the policy (fol. 176). It is, therefore, established by plaintiff's uncontradicted testimony that Plaintiff's Exhibit C was given to appellee at the same time and by the same person who delivered the policy to him and by the uncontradicted testimony of Fredendall that the policy was delivered to appellee by Fredendall. Therefore, Fredendall must have delivered Exhibit C to appellee. Fredendall further says that to the best of his knowledge the By-laws given to appellee by him were in effect in October, 1889, (the time when appellee took out his policy of insurance) (fol. 200). That the copies of the By-laws were sent to him from the home office (fol. 182), and that he gave out the latest that he had (fol. 185).

Fredendall, at the time that appellee took out his policy, was Secretary and Treasurer of the section of the Insurance Department to which appellee belonged. It cannot seriously be contended that the action of the Secretary and Treasurer of the Section, an agent of the appellant, in giving to appellee a copy of the By-laws of 1886, which was the latest copy he had received from the home office and which by his action he represented to the appellee to be a copy of the By-laws then in force, does not make such By-laws a part of the contract. If the contention of the ap-

pellant that the By-laws of 1888 Defendant's Exhibit A are a part of the contract, then it must be held that an agent of a corporation could represent that certain By-laws were in force and the corporation thereafter, say that a mistake had been made and that certain other By-laws were in force which were materially different and would materially change the contract between the parties.

The appellant claims to have established that its Exhibit A, purporting to be By-laws passed by the Supreme Lodge in 1888, were in effect at the time the appellee took out his policy of insurance by the deposition of Walter O. Powers. Mr. Powers' deposition taken in May, 1912, showed that he was the general secretary of the Insurance Department of the Supreme Lodge, Knights of Pythias, since November 15th, 1910. That previous to his holding that position he was for eight years in charge of the Certificate Department of the Insurance Department. That, as general Secretary, he was acquainted and familiar with the books and records of the Insurance Department. That he has in his office and under his care and custody the official records and minutes of the Supreme Lodge, Knights of Pythias, as far as they pertain to the Insurance Department since the year 1878 (fols. 590-596). That he has in his possession the original minutes, records and journal of the Supreme Lodge, Knights of Pythias, showing the adoption and enactment of the Constitution and By-laws governing the Insurance Department at the June session, 1888, of the Supreme Lodge, Knights of Pythias. A pamphlet marked Defendant's Exhibit A was then handed to Mr. Powers and he was asked to state if he knew what it was and what it contained. He answered

that it contained a true and correct copy of the Constitution and By-laws adopted by the Supreme Lodge, Knights of Pythias, at the June session, 1888, which Constitution and By-Laws were promulgated and became effective August 1, 1888. That it contained all the Constitution and all the By-laws in force and effective from and after August 1, 1888 (fols. 666-668). Mr. Powers stated his age to be 37 at the time the deposition was taken (fol. 592). Mr. Powers was, therefore, thirteen years of age in 1888. He could have had no personal knowledge that the Constitution and By-laws of 1888 were, in fact, enacted or promulgated. He says that he has in his care and custody the official records and minutes of the Insurance Department of the Supreme Lodge, Knights of Pythias since the year 1878. These records were not offered in evidence or read in evidence. Mr. Powers does not say that the Defendant's Exhibit A is a copy of anything in the records he had in his control and custody. His mere statement that Defendant's Exhibit A is a true and correct copy of the Constitution and By-laws is no evidence that the exhibit is a true and correct copy.

Counsel for the appellant, in his brief, at pages 42 and 43, calls attention to the fact that at the time the testimony of Mr. Powers was taken the appellant did not appear and that he had twenty days to rebut the testimony if it was not true. Also that no motion was made to suppress the deposition. Of course, there is no rule that would compel the appellee to be represented at the taking of a deposition for appellant. It is hardly probable that a plaintiff in an action involving a policy of insurance of \$3,000 would go to the expense of being present at the taking of a deposition at

Indianapolis when the plaintiff lived in New York State.

The testimony of Mr. Powers covered a great number of facts and under the circumstances it was hardly the duty of the appellee to make a motion to suppress the deposition. The objection was urged at the first hearing of the court after the deposition had been taken.

Counsel for appellant also states in his brief at page 43 that there is no contention that the By-laws offered in evidence were not, in fact, By-laws adopted in 1888. There is no concession on the part of the appellee that the By-laws offered in evidence were in fact the By-laws of 1888, and appellee was not in a position to know whether such was the fact.

Counsel for appellant cannot be heard to say at this time that he should have objected to the proof of Plaintiff's Exhibit C and that the appellee should have informed him that he was offering no proof that his Exhibit A was, in fact, the By-laws of 1888 or should admit that they were such By-laws when no competent proof had been offered on the part of appellant of such fact.

The original records should have been offered or read in evidence and the mere statement of the witness Powers, who had no personal knowledge of what transpired at the time the Constitution and By-laws of 1888 were adopted and who does not say that Exhibit A is a true and correct copy of the records, certainly, is not evidence that Exhibit A is a true and correct copy of the Constitution and By-laws of 1888 or any copy of any Constitution and By-laws.

Counsel for appellant, at page 45 in his brief, calls attention to the fact that defendant's Exhibit C, the By-laws of 1910 (fols. 965-1278) provides that the

laws enacted therein shall be and constitute part of the contract of insurance between members of the Insurance Department and such Department and shall be binding upon such members (fol. 1278). That it also provides that a printed copy of the Statutes duly certified by the General Secretary of the Insurance Department over his signature and under the seal of the Board shall be received and accepted as all the laws governing the Insurance Department, and in evidence in any suit in law or equity without further proof of their lawful passage (fol. 1275). The enactment by defendant of these laws cannot affect the case at bar. The passage of a law in 1910 by the defendant, which was not shown to have been assented to by appellee could not change the rules of evidence of a contract made between appellee and appellant in 1889.

Appellee is under no duty to prove that Powers' testimony was false as there was no proof by Powers or in the case that Defendant's Exhibit A was, in fact, the By-laws of 1888. The trial of the case was at Norwich, N. Y. The taking of the deposition was in effect a privilege to the appellant and the appellant cannot be heard to say that the appellee should have placed upon him the burden and expense of being represented at Indianapolis at the taking of the deposition of the witness Powers.

As there is no competent proof that Exhibit A was the Constitution and By-laws of 1888, there is no competent proof before the Court that the Constitution and By-laws of 1886, Plaintiff's Exhibit C was not part of the contract; that they were repealed in 1888 or that they were not in force at the time the appellee took out his policy.

Counsel for appellee cites cases, at page 49 in his brief, on the proposition that as between members of

a private corporation its books are admissible to prove its corporate acts and transactions. In this case, however, there were no books or documents placed in evidence. There is not even the testimony that Defendant's Exhibit A was a true and correct copy of those books.

In the case of *Zimmerman vs. Masonic Aid Association*, 75 Fed. Rep., 236, an abstract of which is printed in appellant's brief, at page 50, there is the statement:

"There may be cases involving special issues, wherein the production of the original books at the place of trial may be necessary to effectuate justice between the parties, but ordinarily in cases like that before the Court, copies of the articles or By-laws of a corporation, duly proven, may be received in evidence without requiring the production of the originals before the Court."

In the case at bar there was no copy of the Constitution and By-laws of 1888 "duly proven." There is no statement that it was a copy of the records and there is no merit in the objection that the original record could not be placed in evidence as it had to be used or kept in the office of the corporation at Indianapolis, as a reading of the records of the Constitution and By-laws in evidence by the witness Powers would have given the Court a correct copy of the Constitution and By-laws to which no objection could have been taken. As the taking of the deposition was a privilege given to the appellant and as it cannot be said that the burden of being represented at Indianapolis will be put upon the appellee there was no waiver on the part of the appellee to object to the testimony. The appellee made his objection at the first hearing before the Court after the taking of the deposition.

There are no cases cited by counsel for appellant which under the circumstances presented in this case would compel the appellant to be represented and make objection to the testimony of Powers at the taking of the deposition or which would compel him to do anything further than to raise the objection at the first hearing before the Court after the taking of the deposition.

POINT II.

Defendant was estopped from contending that its By-laws set forth in Defendant's Exhibit "A" form part of the contract of insurance.

Assuming that appellant duly proved that Defendant's Exhibit A was a true and correct copy of the Constitution and By-laws of 1888, the evidence shows beyond any question that the Constitution and By-laws of 1886, Plaintiff's Exhibit C was the Constitution and By-Laws that the appellee accepted as part of his contract and which were represented to him by appellant to be a part of his contract.

Plaintiff's Exhibit C was given to him by the appellant's agent, Fredendall, who was secretary and treasurer of the Insurance Section to which the plaintiff belonged. It was with his certificate of membership and he produced it at the trial (fols. 153, 154, 176). Mr. Fredendall testified that he received copies of the Constitution and By-laws from the home office and that he gave them to applicants who asked for them. That he gave out the latest that he had (fols. 180, 182, 185).

The fact that appellee signed an application by which he agreed to comply with the By-laws then in force means that he agreed to comply with the By-laws which were then in force as they were represented to him by the appellant, not that he would comply with some by-laws which he had never seen nor heard of and which he could not possibly know about as he was given a copy of By-laws which are radically different from those of 1888.

It is true that Fredendall only gave the copy of the By-laws to those who asked for them and that there is nothing in the evidence about appellee's asking for them and that Fredendall does not know whether he delivered appellee a copy of the By-laws or not, but there is no proof in these statements that Fredendall did not deliver to the appellee Exhibits C and D with his policy and we have the positive statement of the appellee that such was the fact.

Section 5 of Article IV of Exhibit C (fols. 372-375) provides for the duties of the Secretary. He receives applications for membership and forwards them to the medical examiner in chief for approval. Upon the return of the application he informs the applicant and the obligation shall be administered. He certifies that fact on the application and forwards it with the legal fees to the Supreme Secretary. He keeps a record of the business of the section transacted and a financial account with each member of the section. He keeps a record of the post office address of each member and any change thereof. He uses the books, blanks and receipts furnished by the Supreme Secretary and performs all other duties required of him by the Constitution and By-laws of the Endowment Rank. He receives such a compensation as the section may from

time to time determine. He is required to enter into a bond in such penalty as the section may determine payable to the President of the section which sureties for the faithful discharge of his duties as Secretary.

These same duties are required of the Secretary by the Constitution and By-laws of 1888 (fols. 939-942). We have therefore, a provision in the Constitution and By-laws of 1886 and 1888 giving the Secretary, which position Mr. Fredendall held at the time appellee took out his insurance policy, a wide range of duties and a positive direction to use the books, blanks and receipts furnished him (Fredendall) by the Supreme Secretary. Here was a direct authorization in the Constitution and By-laws of the appellant for Fredendall to use books furnished to him by the Supreme Secretary. That is just what he did in furnishing the appellee with the copy of the Constitution and By-laws of 1886. He states that as far as he had any knowledge Plaintiff's Exhibit C was a copy of the Constitution and By-laws in force at the time the appellee took out his policy (fols. 181, 182). That the Constitution and By-laws were sent to him from the home office (fols. 181, 182). That he would have given appellee a later copy of the Constitution and By-laws if he had had one (fol. 184).

The statement of appellant's counsel in his brief, page 57 that the contract could not be changed by acts of a Section Secretary who was in fact simply a collector of assessments, is not borne out by the evidence in the case as it clearly appears that Fredendall was directly authorized to give out the Constitution and By-laws which were furnished him by the Supreme Secretary and that at the time he gave the Constitution and By-laws of 1886 to appellee that was

the latest copy of the Constitution and By-laws he had.

Plaintiff's application and policy provides that the Constitution and By-laws are a part of the contract. Fredendall was directed by the Constitution and By-laws to use the books, papers and receipts furnished him by the Supreme Secretary. Of course, the word "use" includes the giving out of books to the applicants for insurance. Fredendall gave appellee, as he was directed to do, a copy of the latest Constitution and By-laws which he had. It cannot therefore be contended that Fredendall did not have authority to give appellee the By-laws and Constitution which he did give him or that his act in representing to the appellee that the Constitution and By-laws of 1886 were then in force was an unauthorized act on the part of Fredendall and not binding upon the appellant.

That this situation would result in giving to members of a society different contracts is something which the appellant and not the appellee could remedy. Appellee having accepted the policy of insurance through the representations of the agent, that the By-laws of 1886 were a part thereof and the agent having authority to make such representation he cannot be given another contract because some other member of another section made a totally different contract with the appellant.

The fact that plaintiff paid an increased rate in 1894 and in 1901 does not show that he did not believe that he had a hard, fast contract for a flat rate. The increases which he paid in these years were not paid by him as an increase of rate upon his policy but, as he understood and as he had a right to understand, they were payments made for a reserve fund

and not for the general insurance fund to which his rate at \$3.00 a month was paid.

If Exhibit C had not been delivered to the appellee and he had not known what the Constitution and By-laws were at the time of the issuance of his policy to him without question he would have been bound by the By-laws then in force whether those By-laws were passed in 1886 or 1888. The counsel for appellant in his brief at pages 63 and 64, has cited cases on this question but none of those cases hold that where an agent of the insurance company is duly authorized to issue to a member with his policy of insurance a copy of the Constitution and By-laws which form a part of this contract, that the issuance of a Constitution and By-laws by such an agent to a member taking out a policy of insurance does not in fact make that Constitution and By-laws a part of the contract whether or not there had been a new Constitution and By-laws passed by the insurance company previous to the taking out of the policy.

In the case of *Van Loan vs. Farmers Mut. & Fire Assoc.*, 90 N. Y., 280, cited by appellant's counsel at page 64 in his brief, there was no representation by the defendant as to what constituted the contract as there was by Fredendall in the case at bar.

In the case of *DeGrove vs. Metropolitan Fire Ins. Co.*, 61 N. Y., 594, cited by appellant's counsel it was held that an agent of an insurance company has an apparent authority only to insure in the modes authorized by the charter of the company and upon the terms and conditions in its policy in ordinary use.

In the case at bar, however, the defendant's agent, Fredendall, had authority to give out the Constitution and By-laws and it appears from the evidence that he did give out the latest Constitution and By-

laws which he then had. The statement by the appellee that he intended to be bound by the rules and By-laws as they then existed (fol. 157) does not mean that he intended to be bound by the Constitution and By-laws of 1888, but merely that he intended to be bound by the By-laws which were represented to him by the defendant's agent to be the By-laws that were then in force. The delivery of the policy to the appellee was necessary in order to constitute a contract and the delivery to him by the defendant's agent of the Constitution and By-laws of 1886 made that Constitution and By-laws part of that contract.

The fact that an agent of a local lodge had no authority to pass upon the appellee's application or issue the policy does not affect the case. It is true that the application was sent to the home office and the policy signed at that place. The Constitution and By-laws, however, gave the Secretary authority to issue the Constitution and By-laws which formed part of the contract and the failure of the home office to send to the Secretary copies of the new Constitution and By-laws of 1888 does not make the delivery of the Constitution and By-laws of 1886 to the appellee by Fredendall an act or omission on the part of Fredendall but an omission on the part of the appellant itself.

Fredendall testified that he would get copies of the By-laws and that they were not sent in large quantities to him (fols. 185, 186). The Constitution and By-laws of 1888 was of course, materially different from that of 1886 and the omission of the appellant to send copies of that Constitution and By-laws to Fredendall was an omission on the part of the appellant and not on the part of the appellant's agent. Whether the appellant failed to send Fredendall

copies of the Constitution and By-laws of 1888 because more members would be likely to take out policies of insurance under the Constitution and By-laws of 1886 which provided that the assessments could not be increased than under the new Constitution or whether it was to save expense of printing does not appear from the evidence. The facts in this case show that the appellant is estopped from saying that the Constitution and By-laws of 1886 were not those which formed a part of the appellee's contract.

POINT III.

Under the facts in this case the defendant had no right to raise its rate of assessment in 1910.

The contract of insurance between the parties hereto as already shown consisted of the application, the policy and the By-laws of 1886, Plaintiff's Exhibit C, and by the provisions of this contract the defendant had no legal right to raise the rates above the monthly assessment of \$3.00 per month which the plaintiff agreed to pay at the time he took out his insurance policy.

As already noted, plaintiff's policy Exhibit B required the acceptance of the same by the signature of the plaintiff before it became valid. The contract therefore, between the appellee and the appellant is a contract made in the State of New York.

Berry vs. Knights Templars & Masons Life Ins., 46 Fed., 439, aff'd, 1 C. C. A., 561.

In that case the Court of Appeals said:

"A policy of life insurance which does not become a binding contract until its delivery is governed by the laws of the State in which the insured lives to whom it was there delivered by a resident agent of the company, although it was executed and dated at the company's office in another State."

Meyer vs. Knights of Pythias, 178 N. Y., 63.

Same case, 82 App. Div. (N. Y.), 359.

Wall vs. Equitable Life Association Society, 32 Fed., 273.

In re Pennsylvania Insurance Co., 22 Fed., 109.

The Federal Courts should construe this contract as it has been construed by the N. Y. Court of Appeals.

McClain vs. Provident Lar. Life Assur. Co., 110 Fed., 80.

Hill vs. Hite, 85 Fed., 268.

Pioneer Gold Mining Co. vs. Baker, 23 Fed., 258.

The case of *Wright vs. Knights of Macabees*, 196 N. Y., 391, states the law of New York under facts similar to those in this case.

In his application, plaintiff in that case stated:

"I hereby agree that * * * the laws of the Supreme Tent of the Knights of the Macabees of the World, now in force or that may hereafter be adopted, shall form the basis of this contract for beneficiary membership * * *; that any * * * neglect to pay any assessment which shall be made by the Supreme Tent within the time provided by the laws thereof, or neglect to pay the dues fixed by the said laws, in the manner and at the time provided by said laws, or the By-laws of the Tent to which I may belong, shall vitiate my benefit certificate and forfeit all payments made thereon * * *. This application and the laws

of the Supreme Tent now in force, or that may hereafter be adopted, are made a part of the contract between myself and the Supreme Tent and I, for myself, and my beneficiary or beneficiaries agree to conform to and be governed thereby."

The policy issued to the plaintiff provided for the payment of the sum of \$1,000 payable to his beneficiary "provided he shall have in every particular complied with the laws of the order or that may hereafter be adopted."

The annual dues at the time plaintiff was admitted were \$3.00 per year. The year thereafter with his acquiescence they were changed to \$4.00 per year and he paid at that rate. The monthly assessment was \$1.40. It was found by the Trial Court that it was further agreed that "he shall pay the same rate of assessment thereafter so long as he remains continually in good standing in the order." There was a provision that in case one assessment per month should not be sufficient to pay death and disability claims additional assessments might be made from time to time. In 1904 the defendant amended its By-laws so that plaintiff would be compelled to pay \$3.00 per month. Plaintiff refused to pay the increased rate and was suspended. He brought an action to be reinstated and his certificate of insurance restored and also asked for an injunction against the defendant restraining it from changing the contract or the dues and assessments thereunder. The Court further found that the assessments as made when plaintiff became a member were not sufficient and that defendant would be compelled to go out of business if the increase of rate was not made.

The Court stated at page 399:

"The general reservation doubtless authorized the defendant to amend its by-laws so as to cover subjects not therein specifically provided for and even in other respects, which would not essentially impair the contract as made. But the subjects of assessments and benefits were specifically provided for, each being defined in express terms so that the member knew what he was bound to pay and what he was entitled to receive. After he had acted upon those specifications in the contract by paying at the rate provided thereby for seven years, the plan of insurance was changed from term to life, while the assessments were so advanced and the benefits so reduced as to make a new contract of much less value to him than the old."

The Court stated at page 403 as follows:

"These cases establish the rule that benefits cannot be reduced, or new conditions forfeiting the benefits added by an amendment of the by-laws, even when the general right to amend is expressly reserved. They are controlling, therefore, so far as all the amendments now in question are concerned, except that providing for an increase in the rate of assessments. Following the authorities cited we hold that the amendments which assume to cut down the benefits to which the plaintiff became entitled by his contract with the defendant, are void and of no effect.

"I am personally of the opinion that the amendment increasing the rate of assessment is also void, for I can see no difference in principle between reducing benefits and increasing the amount to be paid for benefits. The plaintiff entered into the contract on the faith of the promise by the association that he should 'pay at the same rate thereafter so long as he remains continually in good standing in the or-

der,' which he had the right to assume and the defendant knew that he would assume, was a covenant not to increase the rate."

The fact that defendant in case at bar does not seek to reduce benefits but only to increase the rates of assessment does not distinguish the case at bar from the Wright against The Knights of Macabees case. In the case of Wright against Knights of Macabees at page 404 the Court stated:

"The price to be paid by the plaintiff for insurance is as essential a part of his contract as the amount of insurance to be paid to him by the defendant on the maturity of the policy. Whether the one is increased or the other proportionately decreased makes no difference in principle, or in the final result. By either method the pecuniary value of the contract, which is property, would be reduced one-half."

In the case at bar, the appellant contends that it had the right to increase the assessment which the plaintiff was to pay upon the following provisions of the contract. That the application stated:

"I hereby agree that I will punctually pay all dues and assessments for which I may become liable, and that I will be governed, and this contract shall be controlled by all the by-laws, rules and regulations of the order governing this Rank, now in force, or that may hereafter be enacted by the Supreme Lodge, Knights of Pythias of the World, or submit to the penalties therein contained. To all of which I willingly and freely subscribe" (fols. 236-237).

That the policy of insurance stated:

"In consideration of the representations and declarations made in his application, bearing

date of October 26th, 1889, which application is made part of this contract, and the payment of the prescribed admission fee; and in consideration of the payment hereafter to said Endowment Rank of all assessments as required, and the full compliance with all the laws governing this Rank now in force, or that may hereafter be enacted and shall be in good standing under said laws the sum of Three thousand Dollars, will be paid—" (fols. 268-270).

That the Constitution and By-laws of 1886 contained the following provisions:

"Section 5. The power to adopt any additional forms, alter or amend any of the laws or the business details connected with the Endowment Rank, is vested in the Supreme Lodge exclusively, and it shall be the duty of that body to preserve uniformity in the workings of the Rank in detail and to require on the part of all Sections, a strict conformity therewith" (fol. 326).

The appellant also contends that the fact that the certificate of incorporation filed in 1870 provided that it (appellant) shall have all power to amend its Constitution and By-laws at will, and the fact that the Act of Congress of 1894, incorporating appellant, provided that appellant "shall have a Constitution and shall have power to amend the same at pleasure," gives the appellant the right to amend the Constitution and By-laws and increase the rates which appellee was to pay. An examination of the facts in the Wright case shows that the case at bar cannot be distinguished from that case. In the application in the Wright case the wording was stronger than in the case at bar as in the Wright case the provision was that the laws "now in force or that may hereafter

be adopted shall form the basis of this contract." The policy in the Wright case provided that the beneficiary should be paid the sum of \$1,000, "provided that he shall have in every particular applied with the laws of the order or that may hereafter be adopted."

So in the Wright case both in the application and also in his policy plaintiff in that case agreed that the laws which might thereafter be adopted should form part of his contract.

In the case at bar the provision in the Constitution and By-laws of 1886 which provided for assessments was as follows:

"Section 1. Each member of the Endowment Rank shall, on presenting himself for obligation, pay to the secretary of the Section, in accordance with his age and the amount of Endowment applied for, a monthly assessment, as provided for in the following table, and shall continue to pay the same amount each month thereafter as long as he remains a member of the Endowment Rank."

In the Wright case a similar provision was "that he shall pay the same rate of assessment thereafter so long as he remains continually in good standing in the order."

In the case at bar the reservation both in the application and in the policy were general in their terms.

In the Constitution and By-laws the provision as to the assessment was specific. The language being that the appellee should continue to pay the same amount each month thereafter as long as he remains a member. The general reservations in the application and the policy and in the Constitution and By-laws being general in their terms, did not authorize the appellant to increase the assessments which were specifically provided for in the Constitution and By-laws.

The Court in the Wright case cited a long line of authorities showing beyond question that the law of New York State does not allow the plaintiff to raise the assessment under the facts in the case at bar.

Judge Ray, in his opinion (fols. 1352-1445), ably and exhaustively discusses the authorities as to whether, under the facts in the case at bar the appellant had the rights to raise its rate of assessment. His conclusions reached are approved in the opinion of the U. S. Circuit Court of Appeals for the Second Circuit, page 396.

It is unnecessary for appellee to discuss further the authorities on the proposition that a general reservation to amend does not give appellant the right to raise rates which are stated in the By-laws to be specific.

The delivery to the appellee by the agent of appellant of plaintiff's Exhibit D takes the case at bar out of the authority of the cases cited by the counsel for appellant and, in fact, all of the cases which treat of the power of a corporation under a general reservation in an application or policy to amend a specific rate of assessment in the Constitution and By-laws.

Exhibit D was delivered to appellee by the same person who delivered the policy to him (fol. 153) and as Fredendall states that he delivered to appellee the policy (fol. 176), it is proven beyond question that Exhibit D was delivered to appellee by Fredendall at the same time his policy was delivered to him.

As already stated, the appellee's secretary, Fredendall, was directed by the Constitution and By-Laws of 1886 and 1888 to use the books, papers and receipts sent him by the Supreme Secretary. He did so use Exhibit D by delivering it to the appellee with his policy.

Exhibit D is entitled, "Important. The only Pythian Insurance, Endowment Rank, Knights of Pythias of the World" (fol. 398). It contained a statement as follows:

"The system of the Endowment Rank is based upon *actual cost of insurance* during expectancy of life, divided, for convenience, into fixed monthly payments during the life of the applicant in accordance with his age at date of applying for membership. These payments *do not increase* with increasing age, but always remain the same during good standing of the member" (fol. 403).

Here was a printed publication of the appellant sent by the appellant to its agent and delivered by the agent to the appellee, the delivery of which by the agent to the appellee, was not only authorized by the Constitution and By-laws but was the very purpose for which the publication was sent out by the appellant as a reading of the exhibit will show. It was issued to show the advantages of appellant's policies of insurance and to induce members of the Knights of Pythias to take out policies of insurance. The appellant therefore, at the time it issued its policy to the appellee either was sending out to the prospective members a pamphlet which misstated and misrepresented the terms of its policy and was doing this knowingly and in fraud of the persons who were taking out policies of insurance with it, or it was sending out the publication with the idea that it contained the true interpretation of the contract and that the rates of assessments could not be raised. In either case the appellant is bound by the statements contained in its publication and cannot now be heard to say that it had the right to raise its rate of assessments.

If the publication was sent out by the appellant and issued to the appellee, when the appellant knew that it did not contain a true statement of its contract, then it was in fraud of the appellee and the appellant cannot now deny its truth and is clearly estopped from saying that it has the right to raise its rate of assessment after making the unqualified statement to the appellee that the rate of assessment always remained the same.

What constitutes estoppel by misrepresentation is stated in 16 *Cyc.*, page 722, as follows:

"Estoppel by misrepresentation, or equitable estoppel, is defined as the effect of the voluntary conduct of a party whereby he is absolutely precluded, both at law and in equity, from asserting rights which might perhaps have otherwise existed, either of property, of contract, or of remedy, as against another person who in good faith relied upon such conduct, and has been led thereby to change his position for the worse, and who on his part acquires some corresponding right either of contract, or of remedy. This estoppel arises when one by his acts, representations, or admissions, or by his silence when he ought to speak out, intentionally or through culpable negligence induces another to believe certain facts to exist and such other rightfully relies and acts on such belief, so that he will be prejudiced if the former is permitted to deny the existence of such facts. It consists in holding for truth a representation acted upon, when the person who made it, or his privies, seek to deny its truth, and to deprive the party who has acted upon it of the benefit obtained" (cases cited).

Whether the appellant had the right to raise its rates is a material fact as the amount that the appellee

was to pay for his contract of insurance during his lifetime was as material a part of the contract as the amount which his beneficiaries were to receive at his death.

The appellee for twenty-two years has paid his assessments with the understanding that they could not be raised. He testified as follows:

"Q. Can you state as to whether, of your own knowledge any provision existed in the By-laws of the Knights of Pythias in respect to this Endowment Rank, which would make you liable for any extra assessment provided such were levied? A. I did not so understand it" (fol. 162).

By the statements in Exhibit "D" that the rate of assessment could not be raised under the contract the appellant therefore, has led the appellee to believe and understand the contract that the rate would always remain the same. The appellant cannot now deny the truth of its statement made to appellee and which has induced him for twenty-two years to pay his premiums to the appellant.

In case, therefore, we consider that the appellant knew or that it considered that at the time it issued Plaintiff's Exhibit "D" it had the right to raise its rate of assessment then the sending out and issuance to the appellee of Exhibit "D" was a material misrepresentation upon which appellee has acted, and the appellant is estopped from saying at this time that it has the right to raise the appellee's rates.

It seems impossible, however, that the Board of Control of a great fraternal society, such as appellant, would send out a publication which they knew unqualifiedly misstated the contract of its policies of in-

insurance. It must be the fact that the Board of Control of appellant considered that the statements in Exhibit "D" were the truth and that appellant did not have the right to raise the rate of assessment.

In case that the appellant considered the contract at the time it sent out Plaintiff's Exhibit "D" as one by the terms of which it did not have the right to raise the appellee's rate of assessment then the contract was made by both parties with the intent that the appellee's rate could not be raised but would remain the same during his lifetime.

The intent of the parties is the main rule of construction in the interpretation of a contract and in this case, where the intent of the parties is not clear, as there is a general power to amend the By-laws but the By-laws give a specific rate of assessment, if the intent of both parties was that the rate of assessment could not be raised, then it must be held that that was the contract.

In the case of *Myer vs. Buell*, 67 App. Div. (N. Y.), 290, the Court quoted at page 295, with approval, an extract from *Beach, Mod. Cont.*, par. 702, as follows:

"It is a cardinal rule in the construction of all contracts that the intention of the parties is to be inquired into, and if not forbidden by law is to be effectuated. * * * To ascertain the intention, regard must be had to the nature of the instrument itself, the condition of the parties executing it, and the objects which they had in view. The words employed, if capable of more than one meaning, are to be given that meaning which it is apparent the parties intended them to have."

The contract is clearly ambiguous in that it pro-

vides in the Constitution and By-laws that the appellee should pay the same rate during his lifetime while in the policy and application there is provision made for an amendment to those By-laws. Here are words "Capable of more than one meaning." The intent of the parties, therefore, must be looked into to ascertain what they considered was the meaning of the contract, and as the intent of both parties at the time the contract was made was that the rate of assessment could not be raised the appellant could not raise the rate of assessment in 1910.

Clark vs. Devoe, 124 N. Y., 120.

Genet vs. Delaware & Hudson Canal Co., 163 N. Y., 173.

Mullin vs. Langley, 37 Misc. N. Y., 789.

Hargraves Mills vs. Gordon, 137 App. Div. (N. Y.), 695.

Worthington vs. Herrimann, 89 App. Div. (N. Y.), 627.

Reynolds vs. Commerce Fire Ins. Co., 47 N. Y., 597.

Beere vs. Mayer, 30 Misc. (N. Y.), 813.

Fox vs. International Hotel Co., 41 App. Div. (N. Y.), 140.

Parshall vs. Eggert, 54 N. Y., 18.

Quackenboss vs. Lansing, 6 Johns. (N. Y.), 49.

The contention of the appellant is that the case of *Supreme Lodge, Knights of Pythias vs. Minns*, 241 U. S., 574, is controlling and calls for a reversal of the judgment in the case at bar.

The Minns case, however, is clearly distinguishable from the case at bar.

In the Minns case the Court stated:

"In determining his rights it is important to bear in mind, that there was no specific prom-

ise to him like the promise to pay in the certificate but that his whole reliance is upon a law of the corporation, and that he had notice that all laws of the corporation were liable to be repealed."

The facts of the case at bar are essentially different in that there was a representation to appellee by appellant by means of Plaintiff's Exhibit "D" that the rates would not be raised.

Nowhere in the Exhibit "D" is there any statement qualifying in any way the absolute statement that payments do not increase with increasing age, but always remain the same during good standing of the member. There is, therefore, in the case at bar a "specific promise to him" (appellee) that the rates would not be raised and the fact that there was a statement in the law of the corporation that all laws of the corporation were liable to be repealed did not give the appellee notice and did not detract from the absolute promise in the representation made by appellant by Exhibit "D" that the rate of assessment would not increase.

The Court in the Minns case in speaking of the clause in the Laws of 1884 that the payment would continue the same so long as the membership continued, states as follows:

"More than ambiguous words in an amendable law would be needed to establish a departure from the ground on which the relation of the parties obviously stood and to create a privilege that attacked the corporation in its very life."

The words in Exhibit "D" are not ambiguous but are a positive and unqualified statement that the pay-

ments would remain the same during the life of appellee.

The appellee in the Minns case took out two certificates of insurance with appellant which he surrendered in 1885, and took out a new one in what was called the Fourth class. In 1888 the Board of Control was ordered to rerate members transferred to the Fourth class as the plaintiff was and thereafter the plaintiff paid as of the age of 48, his original entry age being 42.

The Court stated as follows:

"But in the second stage as in the first the law establishing the Fourth Class had received a practical construction as being open to change by the continued rating of the plaintiff as 48 instead of 42 as at first, and although the plaintiff says in a general way that he protested, he paid, and he had notice of what the earlier companies asserted to be their rights when he came into the new one that asserted the same, and put them in force as against him. We mention these details to show that the plaintiff suffered no injustice and meets with no surprise when we state our opinion that the assumption under Section 3 of the new chapter of a relation with the plaintiff that originally arose under a law of the old corporation was not the assumption of a contract for immutable assessments, and decide that the power to amend given by Section 4 included the power to raise the rates to such point as was necessary for the corporation to go on."

In the case at bar the raise of rates in 1910, which the plaintiff refused to pay was the first time that there was brought to him knowledge that the defendant asserted a right to raise the rate of assess-

ment. He did not acquiesce as in the Minns case in a raise of assessment or a rerating.

Furthermore, the opinion in the Minns case does not discuss and therefore it is taken for granted that the point was not raised in the argument nor the fact brought out in the testimony that it was necessary that the plaintiff sign his policy of insurance in order to make it a binding contract.

In the present case Plaintiff's Exhibit "B" shows that it was necessary for the plaintiff in the case at bar to sign his policy in order to make it a binding contract between the parties. That being so, the contract is one that should be construed under the Laws of New York State as already noted and under the Laws of New York State it is settled beyond question that the defendant under the facts in the case at bar had no right to raise the assessment.

The defendant contends that the raise in rate was necessary and reasonable. It can hardly be contended that it was reasonable for the defendant to increase the monthly assessment of the plaintiff who had paid \$900 at the rate of \$3.00 and \$4.80 per month for twenty-two years and who had paid such rate in accordance with the Constitution and By-laws which were given him and which were represented to be the Constitution and By-laws of the defendant controlling his contract and which contained a representation that the rate would not be raised and who had also been assured by the representation in Plaintiff's Exhibit "D," that the rate would not be raised. The monthly assessment was raised to \$14.70 per month, nearly five times what he had been assured he would have to pay or at his option the value of his policy would be reduced from \$3,000 to \$978. It is quite apparent

that the defendant in its attempt to force the older members of the fourth class to which the plaintiff belongs into the new class, now called the fifth class, is resorting to arbitrary methods to have them forfeit their contracts of insurance and thereby benefit the defendant corporation. No assurance is given that the proposed increase which is practically prohibitive will not be further increased and plaintiff and others similarly situated called upon to pay the amounts which their beneficiaries would realize on their policies within a few years.

The defendant seeks to violate its contract after having enforced it against the plaintiff for twenty-two years and taken his money to meet the demands of others who were insured. Its other policyholders who now come in should be required in due course to meet the appellee's policy as appellee met so many others during those years. If the rates are not sufficient they should be raised so as to meet the situation which may confront the appellant but this raise should be in a legal way, and *against incoming members or against those who came in with the knowledge and notice that the rate against them was liable to be increased.* If the situation which confronts appellant which calls for remedy, it should be met in some other way then depriving its old policyholders of their vested rights and the violation and repudiation of its contracts.

There is no question but that if the appellee had been told the rate could have been raised as the appellant tried to raise it in 1910, that he would never have taken out a policy of insurance. Plaintiff's Exhibit "D" contains the words written in capitals, "Safe, reliable, prompt" and also the statements "reliable insurance at less than one-half the old line cost."

Such statements as these were put in a pamphlet issued by the appellant for the purpose of inducing different persons to take out the insurance on the supposition that they would be "safe" in placing their money into the hands of the appellant, that the cost was one-half of the regular insurance, and that the rates would not increase. In the face of these facts the appellant now contends that the raise of the rate to five times the original rate was a reasonable one.

As Judge Ray stated in his opinion:

"The old members in good health and with a fair prospect of life will not consider the propositions offered or accept same except on compulsion and then only with the hope of eventually saving a part of the money heretofore paid in without interest. It will effect a freeze-out of the old members, who for years have paid in their money for the benefit of new members, and, of course, operate to prolong the life of the corporation if effective. I regard the increased assessment unnecessary and unreasonable" (fols. 1399-1400).

POINT IV.

The fact that the appellee incorporated in 1894, does not affect the plaintiff's right to the relief he seeks.

Appellant received his policy in 1889. The charter of the Supreme Lodge, Knights of Pythias, which existed at that time expired on August 5th, 1890. The present Supreme Lodge Knights of Pythias was incorporated in 1894. Section 3 of the Federal Statute constituting appellant's charter is as follows:

"That all claims, accounts, debts, things in action, or other matters existing for or against the *present Supreme Lodge, Knights of Pythias* mentioned in Section '1' of this act, shall survive and succeed to and against the body corporate and politic hereby created; provided that nothing contained herein shall be construed to extend the operation of any law which provides for the extinguishing of claims or contracts by limitation of time" (28 U. S. Stat. at large, 96, 97).

The plaintiff's contract was made in 1889, so that his rights under the contract were fixed at that time. The charter of 1894, which by its terms gave the appellant power to amend its Constitution and By-laws could have no more effect upon the appellee if he did not assent to such reincorporation than the passage of a new Constitution and By-laws to which he did not assent. There is nothing in this case to show that the appellee assented to the incorporation of the present Supreme Lodge, Knights of Pythias in 1894, or any of the provisions of the charter that it received at that time.

Appellee was no more bound by the fact that the charter granted to appellant in 1894, provided that the appellant could amend its By-laws at pleasure than if the charter provided that all of the contracts made by the old corporation should be cancelled.

By Section 3 of the Fed. Statute constituting the appellant's charter all property of the present Supreme Lodge, Knights of Pythias, became the property of the new corporation and all claims, debts, things in action existing against the present Supreme Lodge, Knights of Pythias, survived against the new corporation.

Counsel for appellant in his brief contends that the corporation from which appellee received his charter expired in 1890, and until the incorporation of appellant in 1894, a voluntary association carried on the business of the corporation; that the assumption of all claims against the voluntary association would not include appellee's claim against the old corporation. The voluntary association, however, having assumed to carry on the business of the old corporation would be liable for any claim against the old corporation and the appellant by its charter having assumed all claims against the voluntary association are liable on appellee's claim.

POINT V.

The contention that the relief granted to appellee by the Trial Court is an interference with the internal management of a foreign corporation is not sustained by the facts.

This action was brought in the Supreme Court of New York, a court of general jurisdiction. It was moved into this court by defendant. Defendant cannot now be heard to say that this Court does not have jurisdiction if the Supreme Court of New York had jurisdiction. The sole question is, therefore, one of jurisdiction in the Supreme Court of New York.

The defendant is not a citizen of the State of New York.

Paul vs. Virginia, 8 Wall., 168.
19 *Lawyers Ed.*, 357.

The defendant before it could do business in the State of New York was required to file in the office of the superintendent of insurance a written appointment of the superintendent as its attorney upon whom process could be served with the same effect as if it was a domestic corporation and service upon the superintendent was equivalent to service upon the defendant.

Section 30, *Insurance Law*, N. Y.

The defendant after such service in this action appeared and answered.

A judgment recovered in this action will have the same force and effect as if the defendant was a resident of this state.

The Lafayette Ins. Co. vs. French, 59 U. S.,
404.
15 *Lawyers Ed.*, 451.

An action lies against a foreign corporation in this state the same as against a domestic corporation.

The Code of Civil Procedure, Sec. 1780 provides:

"An action against a foreign corporation may be maintained by a resident of the state or by a domestic corporation for *any cause of action.*"

The words, "any cause of action" are about as clear and forcible as can be used.

Generally actions have been maintained from time to time against insurance and other foreign corporations on contracts and for other causes in this state.

Gibbs v. Queens Ins. Co., 63 N. Y., 114.

Palmer v. Phoenix Mut. Life Ins. Co., 84 *id.*, 63.

Babcock vs. Schuylerkill and L. Vv. Co. 9 *Supp.* (N. Y.), 845.

O'Neil vs. Mass. Ben. Assn., 63 *Hun* (N. Y.), 292.

Mohr & Mohr Dist. Co. vs. Ins. Co., 12 *Fed.*, 474.

Defendant, however, is understood to urge that because this is an equitable action and the defendant a foreign corporation, the courts of this state cannot put their hands on defendant's officers and home office; that therefore a judgment would be ineffectual and that courts will not entertain jurisdiction where their decrees cannot be enforced.

This contention is without force and has been distinctly repudiated by the courts of this state in the following cases:

Jacobs vs. Mexican Sugar Refining Co., Ltd., 104 *App. Div.* (N. Y.), 242.

Ernst vs. Rutherford & D. S. Gas Co., 38 *App. Div.* (N. Y.), 388.

Boardman vs. Lake S. & Mich. So. Ry. Co., 84 *N. Y.*, 157.

Hallenborg vs. Greene, 66 *App. Div.* (N. Y.), 590.

Prouty vs. M. S. & N. I. R. R. Co., 1 *Hun* (N. Y.), 655.

Ives vs. Smith, 19 *St. Rep.* (N. Y.), 556.

The suggestion is also made that the courts of this state would not and could not interfere with the internal affairs of a foreign corporation. That is true. But this is not the kind of a case about which counsel briefs. The enforcement of a contract such as this has nothing whatever to do with the internal affairs and management of the corporation. Plaintiff

in this case simply wants to prevent his written contract from being canceled.

In the Jacobs case, *supra*, the relief sought was to prevent the cancellation of a lease by the defendant corporation and it was held that the action could be maintained.

Furthermore, the defendant has not raised the question that the relief sought for would be an interference with the internal management of the corporation by his answer and so it is not before this court.

POINT VI.

The fact that the appellee paid an additional sum in 1901 does not show that he acquiesced and adopted the construction of the contract sought to be enforced by appellant.

There is nothing in the evidence to show that plaintiff's rate of assessment was raised by the defendant in 1894. The statement of the witness Powers at folio 647, is that dues of five cents per thousand were added to the rates then in force. Whether the "dues" the witness speaks of were the dues paid by the plaintiff as a member of the Supreme Lodge, Knights of Pythias, is not shown and in the absence of anything to show that this was a raise of the rate of assessment, the presumption is that it was a payment to the lodge and not to the insurance department. Furthermore, there is nothing in the testimony of the plaintiff or any other witness that the appellee paid the added rate in 1894.

As to the raise of assessment in 1901, the appellee stated, "Then I got a notice that they were about to create an Endowment Fund or fund of some kind or a surplus fund or Endowment Fund, and that they were going to increase the amount of the assessment to \$1.80, I think it was, or \$1.60, something like that. It was an increase anyway; I have forgotten what the amount was."

The appellee therefore, by paying an added amount, as he understood for a surplus fund, could not be said to have acquiesced or consented to a raise of his rate of assessment under his original contract. He voluntarily paid a certain sum each month in addition to what his contract called for. This is not a construction of the contract by the appellee favorable to the construction contended for by the appellant and such as was mentioned in the case of *Haydel vs. Mutual Reserve Fund Life Assn.*, 104 Fed., 726, cited by counsel for appellant on his brief at page 139.

The appellee according to the facts in this case has therefore paid an additional sum, beginning in 1901 down until he refused to pay the increased rate in 1910. He says he paid such additional sum not with the idea that he was paying an increased rate of assessment, which the appellant had the right to make, but with the idea that he was paying his money to create a surplus fund which would benefit him and increase the value of his policy.

Furthermore, the fact that the plaintiff paid an added sum in 1901, does not affect his status.

Smith vs. Supreme Counsel, 94 App. Div. (N. Y.), 357.

Williams vs. Supreme Counsel, 80 App. Div. (N. Y.), 402.

Rockwell vs. Knights Temp. Masonic Mutual Aid Assn. 134 App. Div. (N. Y.), 736.

POINT VII.**The appellee did not have an adequate remedy at law.**

This action was brought in the Supreme Court of New York, a court of general jurisdiction. It was moved into this court by defendant. If therefore, the laws of New York would allow the appellee to bring this action and if according to the law of New York, he has not an adequate remedy at law and can bring an action in equity, the court should hold that an action in equity was a proper one for the appellee to bring. It has already been noted that this action can be brought by the great weight of authority of New York State.

The appellant did not raise the question that the appellee had an adequate remedy at law in his answer and so the question should not be considered by the court.

Town of Menx vs. Cook, 108 N. Y., 504.
Goldberg vs. Kirschstein, 36 Misc. (N. Y.),
249.

The plaintiff's children under the policy were to receive \$3,000, if one assessment paid that amount. If not, they were to receive the amount of one full assessment, less ten per cent. Plaintiff is entitled to the benefit of his contract, but it is apparent that under the terms of this policy no action at law could be maintained. It would not secure to him his policy nor could it secure to his children their rights in damages because until the death of plaintiff the value of the policy is undetermined.

It was said in *Franklin Telegraph Co. vs. Harrison*, 145 U. S., 459:

"Where a party has no adequate remedy at law for the protection of his rights a court of equity will not refuse to restrain defendant from interfering with such rights."

**The decree of the Trial Court and
decree of the Circuit Court of Ap-
peals should be affirmed.**

Respectfully submitted,

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W. H. Meehan
of Counsel

19
DEC 17 1917

JAMES D. WARDEN

Supreme Court of the United States

OCTOBER TERM, 1916

No. 388

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SUPREME LODGE, KNIGHTS OF PYTHIAS,
Appellant,

vs.

ARTHUR V. H. SMYTH,
Appellee.

SUPPLEMENTAL BRIEF FOR APPELLEE

Appeal from the United States Circuit Court of Appeals
for the Second Circuit.

HARRY V. BORST,
Attorney for Appellee,
Amsterdam, N. Y.

Supreme Court of the United States

OCTOBER TERM, 1916

No. 389

SUPREME LODGE, KNIGHTS OF
PYTHIAS,

Appellant,

—against—

ARTHUR V. H. SMYTH,

Appellee.

The appellee submits the following reasons and authorities to show that the case as presented by the record is not appealable to this court.

The action was brought in the Supreme Court of the State of New York and transferred into the Circuit Court on defendant's application on the ground of diverse citizenship of the parties.

The complaint does not claim under or mention the Constitution or Laws of the United States and at the trial the plaintiff relied wholly on common law rights (fol. 11-20).

The defendant in its petition for removal, after setting forth the diverse citizenship of the parties, adds,

“That the right, authority and power of your petitioner to make amendments under said act of Congress and acts amendatory thereof is involved in this suit and that this suit is one arising under the laws of the United States.” (fol. 101).

This statement does not avail defendant to make the case one appealable to this court.

In *Press Publishing Co. v. Monroe*, 164 U. S. 110, 41 L. ed. 368, this court said:

“In order to give the Circuit Court jurisdiction of a case as one arising under the Constitution, laws, or treaties of the United States, that it does so arise must appear from the plaintiff's own statement of his claim. * * * It was the defendant, and not the plaintiff, who invoked the Constitution and Laws of the United States. This, as necessarily follows from the foregoing considerations, and was expressly adjudged in *Colorado Cent. Consol. Min. Co. V Turk*, 150 U. S. 138 (37:1030), is insufficient to support the jurisdiction of this court to review, by appeal or writ of error, the judgment of the circuit court of appeals.”

The petition for removal stated only the conclusion of the petitioner that the suit was one arising under the laws of the United States. This was clearly insufficient to remove the cause on the ground that a Federal question was involved.

Hall v. Chicago, R. I. & P. Ry Co., 149 Fed. 564.

Cella et al. v. Brown et al., 144 Fed. 742.

Phoenix Ins. Co. v. Pechner, 95 U. S. 183, 24 L. ed. 427.

Re Winn, 213 U. S. 458, 53 L. ed. 73.

State of Minn. v. Northern Securities Co., 194 U. S. 48, 48 L. ed. 871.

The determination of the Circuit Court of Appeals from which the appellant claims to appeal

is therefore final under Sections 128 and 241, Judicial Code.

Press Publishing Co. v. Monroe, 164 U. S. 110, 41 L. ed. 368.

Colorado Consolidated Mining Co. v. Turck, 150 U. S. 138, 37 L. ed. 1030.

State of Tenn. v. Union and Planters Bank, 152 U. S. 154, 38 L. ed. 511.

Spencer v. Duplan Silk Co., 191 U. S. 527, 48 L. ed. 287.

Huguley Manuf. Co. v. Galetton Cotton Mills, 184 U. S. 294, 46 L. ed. 547.

Stuart v. City of Easton, 156 U. S. 46, 39 L. ed. 341.

The jurisdiction to consider the appeal will be considered by this court even though not presented by counsel.

Continental Nat. Bk. v. Buford, 191 U. S. 120, 46 L. ed. 119.

Metcalf v. City of Watertown, 128 U. S. 588, 32 L. ed. 543.

Mansfield et al. v. Swan et al. 111 U. S. 386, 28 L. ed. 465.

The appeal should be dismissed.

Respectfully submitted,

HARRY V. BORST,

Attorney for appellee,

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Amsterdam, N. Y.

SUPREME LODGE KNIGHTS OF PYTHIAS *v.*
SMYTH.

APPEAL FROM THE CIRCUIT COURT OF APPEALS FOR THE
SECOND CIRCUIT.

No. 107. Argued January 2, 1918.—Decided January 28, 1918.

The appellant had the right to increase the assessment upon the insurance certificate here concerned, and there was jurisdiction to entertain the appeal, the case involving a construction of a federal charter. The case is ruled on both points by *Supreme Lodge Knights of Pythias v. Mims*, 241 U. S. 574. See also *Texas & Pacific Ry. Co. v. Hill*, 237 U. S. 208.

220 Fed. Rep. 438, reversed.

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Opinion of the Court.

THE case is stated in the opinion.

Mr. John J. McCall, with whom *Mr. James E. Watson*, *Mr. Ward H. Watson* and *Mr. Sol. H. Esarey* were on the brief, for appellant.

Mr. Harry V. Borst, with whom *Mr. W. W. Millard* was on the briefs, for appellee.

MR. JUSTICE CLARKE delivered the opinion of the court.

We shall designate the parties as they were in the trial court, the appellant as defendant and the appellee as plaintiff.

This is a suit to enjoin an increase of assessment upon a certificate,—we shall call it a policy—of insurance on the life of the plaintiff, issued by the defendant. The asserted claim, approved by the lower courts, is that the defendant is estopped to demand such increased payment, or to cancel the policy for failure to pay it, for the reason that at the time plaintiff's policy was delivered to him there was handed to him by the Secretary of the Local Section a pamphlet which purported to be a copy of the "Constitution and General Laws" of the Insurance Section or "Endowment Rank" of the defendant, which were then in force, in which copy Article IV, Section 1, reads:

"Each member . . . shall pay . . . a monthly assessment, as provided in the following table, and shall continue to pay the same amount each month thereafter as long as he remains a member of the Endowment Rank."

This provision, it is contended, became a part of the contract of insurance with the plaintiff, which could not be changed without his consent, and made unlawful any increase in his assessment. The defense is that power was given to the defendant by its charter to change its by-laws;

that by provisions in his policy and in his application for it, the plaintiff was notified and charged with knowledge of this fact; and that the increase of assessment complained of was duly authorized pursuant to the terms of this grant of power.

In the disposition which we make of the case the further claim of the defendant, that the by-law relied upon by the plaintiff had been amended before the policy was issued to him, becomes unimportant.

The facts of the case before us make it clear that it must be ruled by the decision of this court in *Supreme Lodge Knights of Pythias v. Mims*, 241 U. S. 574.

The defendant is the same fraternal insurance corporation which was plaintiff in error in that case, and its corporate history there detailed need not be repeated here.

The plaintiff in this case (as in the other) was a member of the 4th Class of the "Endowment Rank," and his policy for \$3,000 was delivered to him on November 26, 1889, upon an application filed the 26th of the preceding month. He paid a monthly assessment of \$3 until 1894 when it was increased to \$3.15, which he paid until 1901 when it was increased to \$4.80, which he paid until 1910 when he received a notice of an increase to \$14.70, which he refused to pay and made the basis of his claim in this suit.

In the *Mims Case* the original policy was issued in 1879 but was surrendered for another in May, 1885, which contained, as the report shows, the same provisions, in almost the same words, as in the Smyth policy. When it was issued the by-law on which the plaintiff relies in this case was confessedly in full force, so that if it be admitted that this by-law was in the form which the plaintiff claims it was represented to him to be at the time his policy was issued, nevertheless his position would be precisely that of *Mims*.

Two increases of assessment made prior to the one ob-

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Syllabus.

jected to were paid by Mims "under protest" and by Smyth without objection. The cases are on all fours one with the other and the decision of the earlier one, which it should be noted was rendered since the decision in the Circuit Court of Appeals, must be accepted as ruling this case on the merits as it also rules against the motion by the appellee to dismiss. *Texas & Pacific Ry. Co. v. Hill*, 237 U. S. 208, and also 215.

It results that the decision of the Circuit Court of Appeals must be

Reversed.
